

(1951) 01 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Miscellaneous Case No. 15 of 1950

Madangopal Kabra

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 09-01-1951

Acts Referred:

Constitution of India, 1950 — Article 226, 245(1), 367, 395
Finance Act, 1950 — Section 13
General Clauses Act, 1897 — Section 6
Government of India Act, 1935 — Section 100, 101
Income Tax Act, 1922 — Section 1, 2(14A), 3, 4

Citation : AIR 1951 Raj 94(1) : (1951) 20 ITR 214

Hon'ble Judges : Nawal Kishore, J;Bapna, J

Bench : Division Bench

Advocate : N.C. Chatterjee, assisted by C.D. Agarwal, H.P. Gupta, S.M. Sanghi and B.P. Agarwal, for the Appellant; Mansharam, Government Advocate, for the Respondent

Judgement

1. This is a test case under the Indian Income Tax Act. The petnr. Madangopal Kabra resides & carries on business in the district of Jodhpur in the United State of Rajasthan where Income Tax had not been levied prior to 1-4-1960. In the Rajasthan Gazette dated 13-5-1950, the following notice was published:

"In pursuance of Sub-section (1) of Section 22, Indian Income Tax Act, 1922 (XI [11] of 1922) we the Income Tax Officers mentioned in Col. 1 of the table below hereby give notice to every person subject to our jurisdictions as specified in the corresponding entry in Col. 3 whose total income during the previous year exceeded the maximum amount not chargeable to Income Tax to furnish within sixty-five day³ from the date of publication of this notice a return in the prescribed form & verified in the prescribed manner setting forth (along with such other particulars as are required by the said form) his total income & total world income during that year.

Penalty.-Any person who fails without reasonable cause to furnish the return

required by this notice or fails without reasonable cause to furnish it within the time allowed or in the manner required is liable u/s 28 of the said Act to a penalty not exceeding one & a half times any tax payable by him."

2. Underneath the notice were published the names of various Income Tax Officers with their addresses & jurisdictions. Thereafter, on 7-8 1950, a notice was served upon the petnr. requiring him to produce his account books on 11-8-1950 in connection with the Income Tax assessment. The constitution of India came into force on 26-1-1950 giving the Dominion Parliament power to legislate in matters relating to Income Tax for the whole of India, while according to the Finance Act of 1950, Rajasthan became taxable territory from 1-4-1950. The petnr. has approached this Ct. with an appln, under Article 226, Const. Ind. objecting to his income being assessed to Income Tax which accrued prior to 1-4-1950 & has based it on two principal grounds, namely: (1) That Rajasthan became taxable territory on 1-4-1950 & therefore, income accruing or arising before that date was not assessable to Income Tax. (2) That the Dominion Parliament did not make any law authorizing taxation on income accruing prior to 1-4-1950 & had no jurisdiction to make any law relating to the imposition of Income Tax in Rajasthan prior to 26-1-1950.

3. He accordingly prayed that the Union of India be restrained by means of a writ of mandamus, or certiorari or an appropriate writ, direction or order from taking any action under any provision of the Income Tax Act for making any assessment of such a tax or for levying & realising the same on the income which accrued to the petnr. prior to 1-4-1960 & further be directed to direct its Income Tax Officers posted in Rajasthan not to harass the petnr. or to demand any account-books or other information for the purpose of making any assessment or to make any such assessment or realize the amount from the petnr.

4. The Income Tax Officer, Jodhpur, affirmed in an affidavit dated 6-11-1950, that the petnr. had been called upon to produce his account-books only in connection with his appln. for import & export licence & that with a view to ascertain the number of persons liable to Income Tax, a survey of Jodhpur was undertaken & a notice was issued to him. No statutory notice under the Income Tax Act was issued or served with a view to assess him to Income Tax.

5. On 7-12-1950, the Income Tax Comr. supported the above position in his reply to the petn. & further stated that the petnr. was liable to pay Income Tax for the assessment year 1950-51 in respect of his total income for the year ending 31-8-1960 computed in accordance with the provisions of the Income Tax Act, as Section 3 Read with Section 2 (14A) proviso (b) (iii) authorized the levy of Income Tax on incomes which accrued or were received in Rajasthan prior to 1-4-1950. A reference was made by him to the agreement dated 25-2-1950 entered into between the President of India & the Rajpramukh of Rajasthan, & it was stated that thereby the Union of India became entitled to impose a tax on incomes which accrued or arose prior to 26-1-1950. It was stated in the end that a petn. for the issue of a writ was incompetent as the petnr. had other specific &

adequate remedy under the Income Tax Act for the removal of any rightful grievance he may have in the matter of assessment under that Act.

6. On the above, the following points emerge for decision: (1) Whether Rajasthan became taxable territory on 1-4-1950 &, therefore, incomes accruing or arising prior to that date were not liable to Income Tax. (2) Whether the Parliament had no power to make law relating to the imposition of Income Tax on incomes accruing prior to 26-1-1950. (3) Whether the petnr. was not competent to ask for a Writ of Prohibition because a specific & adequate remedy was available to him under the provisions of the Income Tax Act.

7. Along with the above, two other points were agitated on behalf of the resp., & these are : (a) That the Union of India had done no judicial act in respect of which a writ of prohibition may be issued against it & further that in any case, since the Income Tax Comr. or the Income tax Officer, Jodhpur, were not parties to the petn., a writ could not be issued against them, (b) That the Instrument of Accession was a contract between the Govt. of India & the Rajpramukh of Rajasthan & while it was open to either of them to claim enforcement of its provisions, the subject was not competent in law to do so.

8. In connection with the first question it may be pointed out that the Income. tax Act, 1922 was not applicable in Rajasthan prior to 1-4-1950 & barring the covenanting State of Bundi, there was no law in the other covenanting States of Rajasthan imposing a tax on income. The petnr. who was a resident of the covenanting State of Jodhpur thus enjoyed complete immunity from the levy & assessment of his income accruing from his business carried on by him in that area prior to the formation of Rajasthan & thereafter as well since the same state of things continued till the passing of the Indian Finance Act 1950 (XXV [25] of 1950) by the Dominion Legislature on 31-3-1950. It was for the first time suggested by the Indian States Finance Enquiry Committee in their report dated 9-7-1949 (vide part I, para. 33) that for the financial integration, it was necessary that Income Tax should ordinarily be levied in all States & it was recommended (vide part. I, para. 34) that the date from which integration should come into force should be 1-4-1950. An agreement was executed between the Rajpramukh of Rajasthan & the President of India on 25-2-1960 according to Article 278, Const. Ind. accepting the above recommendation of the Committee. The result was the enactment of the Finance Act (xxv [25] of 1950) which amended the Income Tax Act (XI [11] of 1922) & made it applicable to the whole of India except the States of Jammu & Kashmir & in place of cl. (14A) of Section 2, as it stood before, a totally new clause defining "Taxable Territories" was substituted. It would be necessary for the purpose of disposing of the points involved in this petn. to deal with this clause at length but before doing so, it may be pointed out that the tax is charged u/s 3, Income Tax Act which is a permanent Act & that the income taxed is that of the previous year & not that of the year of assessment. This is clear from a plain perusal of the relevant portion of this section which runs as below :

"Where any Act of the Central Legislature enacts that Income Tax shall be charged for any year at any rate, tax at that rate shall be charged for that year in accordance with and subject to the provisions of this Act in respect of the total income of the previous year."

9. Again, according to the relevant portion of Section 4 of the Act, "the total income of any previous year" of any person includes all income, profits & gains from whatever source -derived which (a) are received or deemed to be received in the Taxable Territory in such year by or on behalf of such person or (b) if such person is resident in taxable territories during such year, (i) accrue or arise or deemed to accrue or arise to him in the taxable territories during such year or (ii) accrue or arise to him -without the taxable territories during such year or (c) if such person is not resident in the taxable territories during such year accrue or arise or deemed to accrue or arise to him in the taxable territories during such year.

10. Reading these two sections together, two important principles emerge, namely : (1) That the income should have accrued during the previous year, that is, the year previous to the year of assessment, (i) That this income should have been received or accrued or deemed to have been received or accrued to the assessee in the taxable territory during the previous year or the assessee should be a resident of the taxable territory during the previous year.

11. The contention of the learned counsel for the resp. is, that it is the unascertained income of the current year which is actually taxed & that the income of the previous year is used merely as a yard stick or measure. It, however, runs counter to the plain language of Sections 3 & 4, Income Tax Act & also to the various authorities of different Cts. on the point. Upto a certain stage, the law in England & India was identical but from 1922 it became different & since that year, the subject of the charge is the income of the previous year & not the income of the year of assessment. In re In Re: Assessment of Behari Lal Mullick, the learned counsel for the assessee contended that the previous year's income was taken as a basis on which the assessment was provisionally made & that the tax was levied on the income of the current year. He relied on the well-known Brown's case reported as Brown v. National Provident Institution (1921) 2 A. C. 222 : (90 L. J. K. B. 1009) but the learned counsel for the Govt. urged that the principle, in this case, could not apply to India as the tax was charged on the income of the previous year which was the subject-matter & not the basis of assessment. The Legislature, it was argued, had intentionally departed from the principle followed in the previous Acts. Bankin C. J. held that under the Indian Act of 1922, the income of the previous year appeared not as a standard by which the next year's income was to be computed nor as a a measure but as being itself the subject-matter of the tax. The Indian Legislature in seeing its way to impose the Income Tax directly upon actual receipts got rid of national or statutory incomes altogether & thereby avoided the labour of subsequent adjustments & the inconvenience of refunds. There was nothing absurd,

impossible or unjust, according to Rankin C. J., in levying income tax upon the actual receipts of a completed year in the year which follows. The same view was taken in *Commr. of Income tax v. Karupiah A. I. R. 1929 Mad. 35 : (116 I, C. 700 F.B.)* , which was an F. B. case. It was held that under the Act the income of the year previous to the year of assessment was not to be taken as merely a guide to the ascertainment of the income of the year of assessment but as the actual sum which was subject to taxation. In *re In Re: Assessment of Behari Lal Mullick*, was followed while Brown's case was distinguished. In (1945) 13 ITR 221 (Privy Council) their Lordships made some general observations as to Indian Income Tax Law for the purpose of clearing away a certain confusion of thought which appeared to affect the contentions in the case. In the first place, their Lordships held that under the express terms of Section 3, Income Tax Act, the Subject of charge was not the income of the year of assessment but the income of the previous year. This was in direct contrast to the English Income Tax Acts under which the subject of assessment was the income of the year of assessment though the amount was measured by a yard-stick based on previous years. Their Lordships referred to the able judgment of Bankin C. J. in *In re In Re: Assessment of Behari Lal Mullick*, & agreed with it. In the second place, it was observed by their Lordships that the Income Tax Act, as amended from time to time, formed a Code which had no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finance Act. In *re Rawji Dhanji & Co.. 1940 6 ITR 1 (Bom.)* the assessees, who were merchants carrying on business at Bombay & Rangoon were assessed in the year 1937-38 on their total income for their previous year which ended on 14-11-1936. In assessing the income, the Income Tax authorities disallowed a certain sum on account of loss in Rangoon business in the previous year on the ground that Burma had ceased to be a part of British India in the assessment year 1937-38. Beaumont C. J. held, after relying on *In re In Re: Assessment of Behari Lal Mullick*, that as the tax was imposed for the year of assessment on the actual income of the previous year & Burma was part of British India in 1936-37, the assessees were entitled to set off the loss in Rangoon against the profits in Bombay. The law is thus well settled that the previous year is the financial or accounting year & it is the income during that year which is taxed in the subsequent year which is the year of assessment.

12. The other principle as stated above is that the income in the previous year must have been received or accrued or arisen or deemed to have been received or accrued or arisen in the taxable territory or the assessee himself must have been a resident of the taxable territory in the said previous year. The distinction between persons ordinarily resident or not ordinarily resident may be left out for the present as it is not relevant for the purposes of this case. This point was brought out in the *S. B. case* reported as *Commr. of Income Tax, Madras v. Veliamamai Achi A. I. R. (1939 Mad. 77 : (1939) Mad. 388 S. B.)*. The assessee, who was a resident in the Madras Presidency, owned a saw mill in Burma in the account year, that is, the year commencing 1-4-1936. The saw mill

business resulted in a loss & her income consisted solely of interest received from investments. For the purpose of assessment of Income Tax, she sought to set off the loss sustained in the saw mill business against the profits of her assessment. The Income Tax officer refused to allow her to do so on the ground that on 1-4-1937 Burma had ceased to be a part of British India & that the loss having been sustained outside British India could not be set off. A very ingenious argument was advanced by Mr. Patanjali Sastri, who appeared for the Comr. of Income Tax, that as the Income Tax Act did not come into operation in any year until the Finance Act had been passed, the Income Tax Act must be treated as a statute which is passed every year & the words "British India" must be deemed to mean British; India as it stands at the time of the passing of the Finance Act & not what it was in the previous year. This argument was not accepted by Leach C.J. who held that:

"while the Income Tax Act could not be applied in any year until the Finance Act had been passed, the Act could not be treated as a statute which is passed annually. It was a permanent enactment & may not be forced in any particular year until Finance Act had been passed."

It was further held that

"Section 4 of the Act could not be divorced from Section 3 & that as Section 3 charged the tax on the income of the previous year, it must be charged on the income received in what was British India during the previous year." Accordingly, it was held that since Burma was a part of British India during the financial year, the loss must be deemed to have been sustained in British India. The above observations by Leach C. J. are sufficient also to dispose of the contention of the learned counsel for the reap, that the taxing enactment was the Finance Act & not the Income Tax Act. Reference may also be made to the statement of law by Lord Dunedin in *Whitney v. Inland Revenue*, Commrs. (1926) A.C. 37 : (96 L. J. K. Rule 165) that there were three stages in the imposition of a tax "

"There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next there is the assessment. Liability does not depend on assessment, the. ex hypothesis has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery if the person taxed does not voluntarily pay."

13. It is the Income Tax Act which determines what persons in respect of what property are liable & how the tax is to be recovered but assessment is settled under the Finance Act which is the annual Act & only determines the rate. Section 67-B, Income Tax Act, provides for the contingency if in any year the finance Act is not passed by 1st of April or no provision is made therein for the charging of Income Tax in any year. Thus, the Income Tax Act is the fiscal & taxing statute laying down the incidence of taxation.

14. The next important question calling for a determination is whether Rajasthan

became taxable territory during the financial year in this case, that is, 1919-50, for, if the answer is in the negative, the petnr. must be held to be immune from liability to assessment on the income of that year.

15. The relevant section which calls for a careful consideration is Section 2 (14A), Income Tax Act, as amended by the Finance Act of 1950, which defines "taxable territories", & is as under :

" "taxable territories" means -

(a) as respects any period before the 15th day of August, 1947, the territories then referred to as British India, but including Berar,

(b) as respects any period after the 14th day of August, 1947, and before the 26th day of January, 1950, the territories for the time being comprised in the Provinces of India, but excluding the merged territory of Cooch-Bihar,

(c) as respects any period after the 25th day of January and before the 1st day of April 1950, the territories comprised in Part A States, but excluding the merged territory of Cooch-Bihar, and the territories comprised in Part C States, but excluding the States of Manipur, Tripura and Vindhya Pradesh,

(d) as respects any period after the 31st day of March 1950, and before the 13th day of April 1950, the territory of India excluding the State of Jammu and Kashmir and the Patiala and East Punjab States Union, and

(e) as respects any period after the 12th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir ;

Provided that the taxable territories shall be deemed to include:

(a) the merged territories :

(i) as respects any period after the 31st day of March 1949, for any of the purposes of this Act, and

(ii) as respects any period included in the previous year, for the purpose of making any assessment for the year ending on the 31st day of March, 1950, or for any subsequent year; and

(b) the whole of the territory of India excluding the State of Jammu and Kashmir :

(i) as respects any period, for the purposes of Sections 4A and 4B,

(ii) as respects any period after the 31st day of March, 1950, for any of the purposes of this Act, and

(iii) as respects any period included in the previous year for the purpose of making any assessment of the year ending on the 31st day of March, 1951, or for any subsequent year;

16. The territory of India was rapidly changing after the Indian Independence Act, 1947, & instead of defining India separately for the different periods of its expansion, the Legislature provided different meanings to the expression "taxable territories" according to the successive stages of expansion of India. Upto 14-8-1947, the operation of the Income Tax Act has been limited to what was British India, including Berar. On 15-8-1947, British India ceased to exist as such, but that territory became divided into Provinces of India followed by the important expansion of the Provinces by merger of a large number of Indian States, & while some were merged in the Provinces, others were constituted into certain Chief Comrs." Provinces. Reference may be made to the States Merger (Governors" Provinces) Order, 1949, & the States Merger (Chief Commissioners" Provinces) Order, 1949. The Taxation Laws (Extension to Merged States and Amendment) Act, 1949, extended the Income Tax Act to the merged States mentioned in the Order, & was brought into force in the merged States on 1-4-1949. So during the second period, taxable territories meant the Provinces of India from 15-8-1947, to 31-8-1949, & from 1-4-1949 to 25-1-1950 the Provinces of India plus the merged States. The third period began on 26-1-1950, with the coming into force of the Const. Ind. The old division into Governor"s Provinces & Chief Comrs" Provinces & Native States was done away with, & India was re-constituted into a Union of States classified as Part A, B, C, and D States. For this period from 26-1-1950 to 31-3-1950 the definition of "taxable territories" did not include Part B States. The fourth period is from 1.4.1950, when the taxable territories were to include Part B States except Patiala & East Punjab States Union. The fifth period starts from 13-4-1960, when the whole of India, except the States of Jammu & Kashmir became included in "taxable territories."

17. So far as the language of the section goes, it is clear that Rajasthan became a taxable territory only from 1-4-1950. The learned counsel for the Union of India relied upon proviso (b) in support of his contention that for the period of twelve months from 1-4-1949, to 31-3-1950, Rajasthan (for that matter, part B States) was also included within the terms "taxable territories." Reliance was placed on cl. (iii) of that proviso, & the construction sought to be placed on that clause is that that the said clause makes the whole of the territory of India, including Rajasthan, as a taxable territory for the purpose of making any assessment for the year ending on 31-3-1951. It was contended that as u/s 3, Income Tax Act, the assessment is made for the income of the previous year, the assessment made for the year ending 31-8-1951, i.e., the year beginning on 1-4-1950, & ending on 31-3-1951, will be made in respect of the income of the previous year, i. e, 1-4-1949, to 31-3-1950. In other words, the argument is that the said proviso makes Rajasthan a taxable territory during the period of the year previous to 1-4-1950. On the other hand, it was contended by the learned counsel for the petnr. that there was a difference in the language used in the different parts of the Section, which was important. Attention was drawn to cl. (ii) of proviso (a), where the words used are "for the purpose of making any

assessment for the year ending on the 31st day of March, 1950." It was pointed out that the language used in cl. (iii) of proviso (b) is slightly different. The words used are "for the purpose of making any assessment of the year ending on the 31st day of March, 1951." Leaving aside the difference of date, the difference in language is that while in proviso (a) cl. (ii) the words used are "assessment for the year" in clause (iii) of proviso (b) the words used are "assessment of the year." The contention of the learned counsel for the petnr. is that assessment of the year should mean "assessment of the income of the year," & on that construction cl. (iii) proviso (b) would mean, that the income of the year from 1-4-1950, to 31-3-1951, only become chargeable in the next assessment year beginning on 1-4-1951, & when the assessment is actually made in that year, the income would be of the previous year. The learned counsel urged that the necessity for cl. (iii) arose from the fact that the Patiala & East Punjab States Union became a taxable territory only on 18-4-1950, & it was contended that cl. (iii) made it possible for taxing the income of the broken period from 1st April to 12th April, accruing, arising or received in the Union.

18. After giving careful consideration to the arguments of the learned counsel appearing for the Union of India, we are of opinion that the construction sought to be placed on cl. (iii) of proviso (b) is not correct. According to the scheme of the definition, cl. (d) clearly makes Rajasthan a taxable territory from 1-4-1950 & the extended meaning given by the proviso is to be restricted so far as may be expressly stated therein. The proviso (b) can be divided into three portions, & the whole of the territory of India (excluding Jammu & Kashmir) is declared to be the taxable territory of India, firstly as regards any period for the purpose of Sections 4A & 4B. These sections relate to a definition of persons who may be classed as "residents" or "not ordinarily residents" in taxable territories in any year, & residence for certain periods prior to the year for which assessment has to be made, is directed to be taken into account. The first clause in proviso (b) means to say that the earlier residence in Part "B" States will be taken to be residence in taxable territories while taking account of the residence for a certain prior period. The said proviso secondly declares the whole of the said territory to be taxable territory as respects the period after 31-3-1950, for any of the purposes of Income Tax Act, 1932. So far as Rajasthan is concerned, the same matter is stated in cl. (d) of the definition, but it also makes Patiala & East Punjab States Union as taxable territories for the period from 1st April to 12th April, although according to cl. (e) in the definition, it was not declared to be taxable territory in that clause. Clause (ii) of the proviso was obviously enacted in order to get over the difficulty of separate assessment of tax for the period from 1st April to 12th April as regards individuals in Patiala & East Punjab States Union. In this second clause the words "for any of the purposes of -this Act" clearly signify that the aforesaid territory including Rajasthan is a taxable territory for the purposes of levy, assessment & collection of Income Tax. In the third clause, the whole of the territory of India (excluding Jammu & Kashmir) is declared to be taxable territory as regards any period included in the previous

year for the purpose of: making any assessment of the year ending on 31-3-1951 or for any subsequent year. Assuming for the moment that the words "assessment of the year" mean the same thing as "assessment for the year," & assuming that the previous year of the individuals affected, runs from 1st of April of any year to 31st day of March of the succeeding: year, the previous year referred to in the clause for the purpose of making any assessment in the year beginning on 1-4-1949 & ending on 31-3-1951 would be the year from 1-4-1949 to 31-3-1950, but the proviso makes whole of the territory of India taxable territory only for the purpose of making any assessment of the year 1950-51, & for no other purpose. According to the scheme of the Income Tax Act, it is divided into seven chapters, & while charge of Income Tax is dealt with in Chap. I, the assessment is dealt with in Chap. IV. Their Lordships of the P. C. has observed in the case of (1938) 6 ITR 414 (Privy Council) that

"One of the peculiarities of most Income tax Acts is that the word "assessment" is used as meaning sometimes the "computation of income," sometimes "the determination of the amount of tax payable," & sometimes "the whole procedure laid down in the Act for imposing liability upon the tax-payer." The Indian Income Tax Act is no exception in this respect,"

Section 23 which occurs in Chap. IV refers to assessment, as the marginal note to the section indicates, & the word "assess" & its derivatives "assessment" & "assessed" have been used in the sense of "computation of income." In our opinion, it is at best in the sense of "the determination of the amount of tax payable" that the word has been used in cl. (iii) & not in the sense of "the whole procedure laid down in the Act for imposing liability upon the tax-payer",

19. The above interpretation is also supported by a reference to Section 13, Finance Act.

20. According to Section 13, any law relating to income tax or super-tax in force in Part B States & certain other territories mentioned in the section immediately before 1-4-1959, was declared to cease to have effect except for the purposes of the levy, assessment & collection of Income Tax & super-tax in respect of any period not included in the previous year for the purposes of assessment under the Income Tax Act, 1922, for the year ending on 31-3-1951, or for any subsequent year. What this provision means is that in territories where Income Tax law was in force prior to 1-4-1950 that law will cease to have operation on that date, but nevertheless levy, assessment & collection of Income Tax will be made in the assessment year beginning from 1-4-1950, & ending on 31-3-1951, in respect of the income of any period not included in the previous year for the purpose of assessment under the Income Tax Act, 1922, for assessment year 1950-51. In plain language it means that for the period which remains excluded from the "previous year" for purposes of assessment under the Income Tax Act for year 1950-51 the levy, assessment & collection will be done according to the old State Act. The "previous year" would be the period from 1-4-1949 to 31-3-1950, assuming that the accounting period in respect of the assessee is

from 1st April to 31st March 1960. The period "not included in the previous year, would thus be prior to 1-4-1949. Section 13 thus authorises levy, assessment & collection of Income Tax in respect of income arising, accruing etc. in the year from 1-4-1948 to 31-3-1949 in B States where Income Tax law existed prior to 1-4-1950. It has already been seen that the whole of India (except Jammu & Kashmir) has been defined to be taxable territory from 1-4-1950 & income accruing etc from 1-4-1950 become taxable by virtue of the provisions in Sections 3 & 4 of the Act. In order that persons may not escape taxation during the intervening period from 1-4-1949 to 31-3-1950 in areas where there existed law relating to Income Tax, the provision appears to have been made in cl. (iii) of proviso (b) to Section 2 (14A). This clause makes the territory in which tax was leviable by any other law as also taxable territory for the purpose of making assessment in the year 1950-51. The language used in cl. (iii) is "'for the purpose of making any assessment of the year ending on 31st day of March 1951." As observed earlier, there are three stages in connection with the imposition of a tax. The first is the declaration of liability, the second is the assessment & the third is the collection. This clause makes the territory a taxable territory for the purpose of making any assessment, but not for the purpose of chargeability. The chargeability is left to arise by some other law, & that law is the previous State law referred to in Section 13, Finance Act, 1960. It arises in a twofold manner. In the first place, u/s 6, General Clauses Act, the repeal of the State Law as from 1-4-1950 did not affect any liability incurred under the repealed enactment & secondly though the language used in Section 13 is very complicated, a careful perusal makes it clear that the State Law is not only kept alive for the purpose of levy, assessment & collection of Income Tax on the income of the year 1948-49 but also for the above purposes in the subsequent year. The previous year in relation to the subsequent year 1951-52 is the year 1960-51 & the period not included therein would be the year 1949-60 & the State Law is directed to apply if the income remains untaxed under Indian Law. Again, the previous year is not invariably the twelvemonths ending on the 31st day of March, next preceding the year for which the assessment is to be made, since according to the definition given in item (11) of Section 2, it may mean this year or "if the accounts of the assessee have been made upto a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up" would also be the previous year. Therefore, if somebody is liable to income tax: in any territory where such law was in force prior to 1-4-1950, but certain period has not been included while assessing him to Income Tax, but the chargeability existed, the proviso (b). cl. (iii) would become applicable for such period as he was not charged but the liability had accrued, & the territory would become taxable territory for the purpose of making any assessment of the year 1950-51. The existence of this proviso only makes those persons liable whose income was chargeable to Income Tax under any law in force in those territories, but that law was superseded by the Income Tax Act. According to the information given in the Report of the

Indian States Finance Enquiry Committee, part II, only one of the Covenanted States of Rajasthan, namely, Bundi had law relating to levy of Income Tax. In Bikaner though an Income Tax Act existed in 1941, it was repealed in 1943, but in the rules for licensing of minor factories provision was made for levy of Income Tax at the rate of 12 1/2% on the net profits of any Company. As discussed above, while cl. (d) would only make Rajasthan a taxable territory from 1-4-1950, the territory of the former Covenanted State of Bundi would be taxable territory for the purpose of assessment in the year 1950-51 in respect of the income of the previous year. It may be pointed out that even if there was any doubt in the interpretation or there could be two interpretations, it is sound rule of law that in construing a taxing statute, the construction most beneficial to the subject should be adopted. *COMMISSIONER OF Income Tax, BOMBAY Vs. THE GREAT EASTERN LIFE INSURANCE CO., LTD.*, (Crawford's Statutory Construction (1940) page 502). We are accordingly of the view that the State of Rajasthan, except Bundi only, became taxable territory from 1.4-1950, & therefore, income received, accruing or arising in "Rajasthan for any period prior to the aforesaid date was not liable to assessment to Income Tax.

21. We would observe in passing that the interpretation advanced by the learned counsel for the pefnr. does not fit in with the words in cl. (iii), as also purports to make cl. (ii) redundant, which is not a proper mode of construction of the Statute. If the words "for the purpose of making assessment of the year ending on the 31st March 1951", are urged to mean "for the purpose of making any assessment of the income of the year ending on the 31st March 1951", the opening words of the clause "as respects any period included in the previous year become meaningless, & the opening words can only have some meaning if the words "assessment for the year" may be taken to mean "assessment for the year", & so far as we can see the use of different prepositions does not . make any difference.

22. The next question that was argued before us was whether the Parliament had power to make such law as would impose Income Tax in the Rajasthan territory prior to 26-1-1950. Although a determination of the question is not necessary in view of our finding on the first question, yet as elaborate arguments were advanced, it is desirable to deal with this question as well.

23. The Dominion of India was established by the Indian Independence Act, 1947, which provided that as from 18-8-1947, there shall be set up an independent dominion known as India. According to Section 5, Government of India Act, 1935, as modified by India (Provisional Constitution) Order 1947, it became a Union of India comprising inter alia the Indian States acceding to the Dominion in the manner provided in Section 6 of the Act. According to this section, an Indian State shall be deemed to have acceded to the Dominion if the Governor General signified his acceptance of an instrument of accession executed by the ruler thereof whereby the ruler, for himself, his heirs and successors, declares that he accedes to the Dominion with the intent that Governor General,

the Dominion Legislature, the S. C. & any other Dominion authority shall, by virtue of the Instrument of Accession, but subject always to the terms thereof, exercise in relation to the State such functions as may be vested in them under the Government of India Act. According to Section 6 (2), and Instrument of Accession shall specify the matters which the ruler accepts as matters with respect to which the Dominion Legislature may make laws for his State & the limitations, if any, to which the power of the Dominion Legislature to make laws for the State are to be subject. How, while Section 100, Government of India Act, confers the power on the Dominion Legislature to legislate with respect to any matters enumerated in Lists I & III in sch. vii, according to Section 101, this power is to be exercised only in accordance with the Instrument of Accession of the State & any limitation contained therein. The items relating to taxes are items 44, 45, 46, 54 to 59 in List I & items 17, 25 and 36 in List III of sob, vii, the item of Income Tax being No. 64 in List I. In April 1948, the rulers of various States with the consent of the Govt. of India agreed to the integration of their respective territories known as United State of Rajasthan & according to Article 8 of this Covenant, an Instrument of Accession was executed by Maharajadhiraj Maharana Shri Bhopalsinghji of Udaipur on 15-4.-1948. This instrument was duly accepted by the Governor-General of India on 12-5-1949. According to Article 3, the Rajpramukh accepted all matters enumerated in Lists I & List III of Sch. vii as matters in respect of which the Dominion Legislature may make laws for the United State but added the following proviso:

"Nothing contained in the said List or in any other provisions of the Act shall be deemed to empower the Dominion Legislature to impose Income Tax or duty in the territories of the United States or to prohibit the imposition of any duty or tax by the Legislature of the United State in the said territories."

24. Thereafter, a question arose regarding the reconstitution of Rajasthan & the integration of the territories of some more States & a Covenant was entered into between the rulers of ten States which constituted the former Rajasthan & the rulers of Bikaner, Jaipur, Jaisalmer ".& Jodhpur, according to which it was agreed that the United State of Rajasthan should be reconstituted by the integration of the territories of all the fourteen States. According to Article 6 of the Covenant, the rulers of various States were to make over their administration to the Rajpramukh & all rights, authority & jurisdiction incidental or appertaining to the Govt. of the Covenanting States vested in the United State & was exercisable only as provided by the Covenant, executed by them or by the Constitution to be framed thereunder. According to Article 8, the Rajpramukh wag to execute not later than 15-4-1949 an Instrument of Accession in accordance with the provisions of Section 6, Government of India Act & in place of the Instrument of Accession of the former Rajasthan States & it was made imperative that he shall by such instrument, accept as matters with respect to which the Dominion Legislature may make laws for the United State specified in the Instrument of Accession of the former Rajasthan State. This instrument was duly executed & cl. (8) is a verbatim repetition of cl. (3) of the Instrument of Accession relating to

the former Rajasthan. By means of a proviso attached to this clause, a limitation was imposed upon the power of the Dominion Legislature to legislate & thereby impose a tax or duty in the territories of the United State of Rajasthan. This was final Instrument of Accession which restricted the power of the Dominion Legislature to legislate, & thereby excluded its authority to impose any tax in the territories of Rajasthan. This state of things continued till 26-1-1950 when the constitution of India was promulgated. By Article 395, Government of India Act, 1935, together with all enactments amending or supplementing it, was repealed & by Article 245(1) the power to make laws for the whole or any part of the territory of India from 26-1-1950 was conferred on the Parliament subject to the provisions of the Constitution. This, of course, included the power to make laws for the imposition of income tax which is item 82 of List I but only from 26-1-1950 onwards & not retrospectively. According to Article 367, unless the context otherwise requires, the General Clauses Act, 1897 shall, subject to any adaptations & modifications, apply for the interpretation of the Constitution. Now, Section 6, General Clauses Act, provides that where any enactment is repealed, unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or affect any right or privilege acquired under any enactment so repealed. In accordance with the provisions of Section 101, Government of India Act, referred to above, the power to legislate was exercisable only in accordance with the Instrument of Accession & the limitations contained therein. The Instrument, of Accession by the Rajpramukh of Rajasthan positively excluded the authority of the Dominion Legislature in the matter of legislation for the purpose of imposition of Income Tax. The Dominion Legislature accordingly assumed powers subject to the limitations imposed upon it. In the circumstances, before 26-1-1950, no law could be enacted making Rajasthan a "taxable territory" before 26-1-1950. Chapter 1 of part XI of the Constitution, which relates to legislative power of the Union, does not purport to expressly authorised the Parliament to legislate retrospectively especially in a matter where the Dominion Legislature had no power to legislate under the Government of India Act, 1935. The provisions of Section 6, General Clauses Act, therefore, apply with full force, & the previous operation of Section 101, Government of India Act, could not be affected by subsequent legislation.

25. The learned counsel for the Union of India urged that under Sub-section (3) of Section 6, Government of India Act, 1935, a ruler had power to vary the Instrument of Accession of his State by a supplementary Instrument of Accession executed by him & accepted by the Governor General & extending the functions exercisable. by any Dominion authority in relation to his State by virtue of the earlier Instrument of Accession & that the various rulers of Rajasthan entered into a fresh Covenant agreeing to accept the Constitution of India to be the Constitution for the United State of Rajasthan, & the Rajpramukh of Rajasthan issued a proclamation on 23-11-1949, accepting the Constitution of India as Constitution for Rajasthan & further declared that as from the date of its commencement the said Constitution shall supersede & abrogate all other

constitutional provisions inconsistent therewith & then in force in the State. It was urged that the Report of the Indian States Finances Enquiry Committee 1948-49 was accepted by the Rajpramukh of Rajasthan, & under that Report levy of Income Tax by the Union of India was recommended for the assessment year 1950-51 in respect of the income of the previous year 1949-50 accruing, arising or received in Rajasthan. It was further argued that the agreement between the President of India & the Rajpramukh of Rajasthan dated 25-2-1950, could be taken as a fresh Instrument of Accession referred to in sub p. (3) of Section 6, Government of India Act, & as authorising the levy of Income Tax even for the period prior to 26-1-1950. The agreement dated 25-2-1960, can not be a fresh Instrument of Accession as after the enforcement of the Constitution the provisions of the Government of India Act stood repealed by Article 395 & the agreement was entered into in accordance with the provisions of Articles 278, 291, 295 & 306 of the Constitution as 13 mentioned in the Preamble to the agreement. Article 268 of the Constitution clearly lays down that no tax is to be levied or collected except by authority of law & the limitation on the legislative power of the Parliament has already been discussed above. On the second question, therefore, our opinion is that the Parliament had no power to enact a law imposing Income Tax in Rajasthan in respect of income prior to 26-1-1950.

26. It was contended by the learned counsel for the resp. that the terms of the Instrument of Accession could not be enforced by the subject in a Court of Law. The learned counsel, cited Secy, of State v. Rustam Khan A. I. R 1941 P. C. 64 : (I. L. R. (1941) Kar. P. C. 94.) and Vajesinghji v. Secy of Stats A. I. R.) 1921 P. C. 216: (48 Bom. 613). These are both authorities relating to transactions between independent States & the doctrine of an Act of State was made applicable. In this case, however, there is no question about the application of this doctrine as the petnr. is a citizen of the Republic of India & comes to Ct. for the redress of his grievances. A plea of the Act of the State affords no defence against the officers of the Crown for interference with the rights of subject. According to Halsbury's Laws of England (Hailsham Edn.) vol. 26 p. 251. Article 561, if a British subject suffers damage from a British Act of State unauthorized by Parliament & outside the constitutional limits of the Royal Prerogative, he has a right of action against the officer by whom the Act was performed even if it was expressly authorized by the Crown or by the Govt. According to Johnstone v. Pedlar (1921) 2 A. c. 262 (90 L. J. P. C. 181) the oases in which the defence of Act of State has been recognised were cases in which the acts complained of were committed out of British territory. Accordingly, this doctrine cannot be invoked to cover the case of a citizen of the Republic & is, in our opinion, altogether irrelevant to the question agitated in this case.

27. The next important question which has been debated is whether the petnr. is not competent to ask for a writ of prohibition because a specific & adequate remedy is available to him under the provisions of the Income Tax Act. Along with this question may also be considered the point urged on behalf of the reap, that the Union of India had done no judicial Act in respect of which a writ may be

issued against it & further that, in any case, since the Income Tax Comr. & the Income Tax Officer were not parties to the patn., a writ could not be issued against them.

27 a. So far as the question regarding the issue of a writ of prohibition, where an alternative remedy is available, is concerned, we consider that the position has been well settled for a long time. The law is summed up on this question in Halabury's Laws of England (Hailsham Edn.) vol. 9, Articles 1396 & 1397 with certain exceptions mentioned in Articles 1401 to 1404. The issue of the writ of prohibition, though not of course, is of right & not discretionary. Prohibition lies not only for excess of or absence of jurisdiction, but also for the contravention of some statute or the principles of the common law; it does not, however, lie to correct the course, practice, or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. The Ct. in deciding whether or not to grant a writ of prohibition will not be fettered by the fact that an alternative remedy exists to correct the absence or excess of jurisdiction or an appeal lies against such absence" or excess. These are what have been held to be immaterial objections to the issue of a writ of prohibition. In *Farquharson v. Morgan* (1894) 1. Q. B. 652 (68 L. J. Q. B. 174) Lord Halsbury expressed his views in very strong language. He was disposed to decline to interfere with the proceedings in the County Ct. & yet held that the writ must issue to prohibit further proceedings as it had long been settled that where an objection to the jurisdiction of an inferior Ct. appears on the face of the proceedings, the Ct. must protect the prerogative of the Crown & the due course of the administration of justice by prohibiting the inferior Ct. from proceeding in matters as to which it is apparent it has no jurisdiction. *Lopes, L. J.*, after holding that there was a recognized distinction between a latent want of jurisdiction & a patent want of jurisdiction, expressed the view that the authorities were unanimous that where the want of jurisdiction is patent, the grant of the writ of prohibition is of course. In *The Queen v. Local Board* (1882) 10 Q. B. D. 309 : (52 L. J. M. C 4) *Brett., L. J.* observed that the Ct. should not be chary of exercising the power of prohibition & that wherever the Legislature entrusts to any body of persons other than the superior Cts. the power of imposing an obligation upon individuals the Cts. ought to exercise as widely as they can the power of controlling persons if those persons admittedly attempt bodies of those to exercise powers beyond the powers given to them by Act of Parliament. In *Channel Coaling Co. v. Boss* (1907) 1 K. B. 145: (76 L. J. K. B. 145) it was argued that there was an alternative remedy open to the petnr. by way of an appln. to the Ct. below, yet it was held that this did not disable him from requesting the King's Bench to issue a writ of prohibition when, the order has been passed without jurisdiction. In *The King v. Electricity Commrs.* (1924) 1 K. B. 171 : (93 L. J. K. B. 390) the question relating to the issue of writs of prohibition and certiorari was discussed at length. It was held both writs were of great antiquity forming part of the process by which the King's Cts. restrained Cts. of inferior jurisdiction from exceeding their powers while prohibition restrained the tribunal from proceeding further in excess

of jurisdiction. Both the writs dealt with the question of excessive jurisdiction. Where a body of persons act in excess of legal authority, a writ of prohibition was the remedy. In this case, a writ of prohibition was issued to the Electricity Comrs. directing them not to proceed with a certain scheme which they had in hand for effecting improvements for the supply of electricity, notwithstanding that the order embodying the scheme could not come into operation until confirmed by the Minister of Transport & approved by resolution of the Houses of Parliament, *Rex v. Kensington Income tax Commrs.* (1914) 3 K.B. 429 (83 L.J.K.B.. 1439) is a case of a writ having been issued to Kensington Income Tax Comrs. The appct. in this case carried on business in the City of London but resided in Kensington & he contended that he was liable to assessment in the City of London only. This contention was rejected in the Ct. below but the lit. of Appeal reversed the order & issued a writ prohibiting the Income Tax Comrs. from proceeding on an assessment to Income Tax. The contention for the Crown that the appct. should have filed an appeal against the assessment made by Kensington Comrs. & was, therefore, not entitled to writ was not accepted. The decision of the Of; of Appeal was affirmed by the House of Lords in *Remington Income Tax Commrs. v. Aramayo*, (1916) A.C. 215: (84 L.J.K.B. 2169). In view of the above, where there is complete lack of jurisdiction & no dispute as to facts, a writ of prohibition must issue. Under Article 226, Const. Ind., power is conferred upon the H. C. to issue not only writs "in the nature of various categories specified in that article but those writs themselves as also "directions" & "orders" & they may be issued not only for the enforcement of fundamental rights but for any other purpose. As held in *Jesingbhai Ishwarlal v. Emperor* A.I.R. 1950 Bom. 363: (52 Cri L.J. 120 P. B.) , "any other purpose" was embodied in this article in order to remove any doubt that the H. C.'s jurisdiction to issue these writs was confined merely to the enforcement of fundamental rights because the H. C. could issue a writ otherwise than "for the enforcement of fundamental rights & that power of the H. C. is saved & safeguarded by providing that writs can be issued not only for the purposes of enforcement of fundamental rights but also for any other purpose, In *Emperor Vs. Jeshingbhai Ishwarlal*, cited on behalf of resp., the writ was refused as here was suppression of material facts in the affidavit & therefore this authority has no bearing on the facts of the present case. In the circumstances since in this case we have come to the conclusion that there was no law according to which Income Tax could be imposed for the period prior to 1-4-1950 a proper case for the issue of a writ of prohibition has been made out.

28. The contention of the learned counsel for the resp. that the Union of India had done no judicial act in respect of which a writ may be issued is of no consequence. Under Article 270 of the Constitution, tax on income other than agricultural income is levied & collected by the Govt. of India & accordingly, a notice by the Income Tax Officer, who is acting on behalf of the Govt. of India, is a judicial act by the latter. Accordingly, so far as the Union of India is concerned, in view of what has been stated above, the petnr. is entitled to a writ of prohibition against it. The learned counsel on his behalf has also asked for a writ

being issued against the Income Tax Officer, Jodhpur & Income Tax Comr., Rajasthan as well on the ground that though they are not parties, they have throughout these proceedings taken an active part & resisted the petn by filing replies & affidavits. No doubt, the Income Tax Offices, Jodhpur, has been duly served & has filed appls & affidavits while the Comr. has filed the reply, but as held in Lady Dinbai Petit Vs. M.S. Noronha, all this does not make them parties. Hence a writ cannot be issued against them though a direction to the Union to direct its employees to desist from recovering Income Tax can be issued & will serve the purpose of the petnr.

29. For the above reasons, we hereby accept this petn. & issue a writ to the Union of India directing it not to levy Income Tax on the income of the petnr. accruing, arising or received in Rajasthan excluding the area of the former covenanted State of Bundi, prior to 1-4-1950, & to instruct the Income Tax Officers, who are its employees, not to demand from the petnr. any return of income for any period prior to 1-4-1950 or any account books for that period, or other information for the purpose of making any assessment of Income Tax or collect the same for the above period. The resp. will pay costs to the petnr. which are assessed at Rs. 600.