(1955) 12 KL CK 0013

In the High Court Of Kerala

Case No : O.P. No''s. 109 to 111 of 1955

P. Subramoniam APPELLANT

Vs

The Income-Officer RESPONDENT

Date of Decision : 19-12-1955

Acts Referred:

Finance Act — Section 13, 23, 23(4), 34
Travancore Income Tax Act, 1121 — Section 47, 47(1), 5

Citation : (1955) 12 KL CK 0013

Hon'ble Judges : M.S. Menon, J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : T.N. Subramonia Iyer and S. Subramonia Iyer, for the Appellant; G. Rama Iyer, for the Respondent

Judgement

M. Menon, J.—Petitioner in these petitions was served with-notices u/s 47 of the Travancore Income-lax Act, 1121. O. P. No. 110 relates lo the assessment year 1122, O. P. No. Ill to the assessment-year 1123 and O. P. No. 109 to the assessment year 1124.

2. The notice in respect of the assessment year 1122 is notice No. 160/2/-4-1955, that in respective of the assessment year 1123 is notice No. 161/27-4-1955 and that in respect of the assessment year 1124 is, notice No. 162/27-4-1955. The notices are identical in wording except as regards the year specified. In all, of-them .the Income Tax Officer stated that in consequence, of definite information which had come into; his possession, he had discovered that die Petitioner''s income assessable to Income Tax for the year specified; had been under-assessed and that he therefore; proposed to assess the said income that had been under-assessed and that die Petitioner should deliver not later than 31-5-1955 or within 35 days of the receipt of the notice a return in die form attached of his total income and total world income assessable for, the said year. The prayers in all the three petitions are also identical in wording and the prayer in O. P. No. 110 of 1955, which deals with the earliest of the three assessment

years, is reproduced below:

On grounds mentioned in the affidavit herewith submitted it is prayed that this Hon''ble Court may be pleased to issue a writ of prohibition against the Respondent from proceeding with the enquiry pursuant to the notice No. 160/27-4-55 dated 25-4-1955 issued u/s 47 of the Travancore Income Tax Act, 1121 for the year 11.22 M. 15. or in the .alternative to issue a writ of certiorari to quash the said notice with costs throughout.

3. These petitions were heard together and as no separate arguments were advanced in respect of any of them a common judgment will suffice.

4. The first contention is that the notices u/s 47(1) of the Travancore Income Tax Act, 1121, have been issued during the pendency of proceedings against the Assessee under the Travancore Taxation on Income (Investigation Commission) Act, 1124, (Evasion Case No. 8 of 1950) and that such parallel proceedings are repugnant to good faith and natural justice. It is, however, unnecessary to consider this question as we are quite satisfied that no investigation under the Travancore Taxation on Income (Investigation Commission) Act, 1.124, has at any time been directed against the Petitioner in respect of die years 1122, 1123 and 1124 and the assumption to the contrary is not sustained by the documents produced before us.

5. Ext. I dated 10-2-1950 is the order of the Government of Travaneore Cochin directing investigation under the Travancore Taxation on Income (Investigation Commission) Act, 1124. It reads as follows:

Sri P. Subramanian is a leading businessman of Trivandrum. He has so far been assessed to Income Tax only up to 1121.

2. His assessment for the year 1120 is reported to be grossly inadequate as his accounts of 1119 reveal a suspicious credit balance in the account of C.S. Lokanatha Mudaliar, amounting to Rs. 25,000. A similar sum appearing in the subsequent year was treated as undisclosed profits by the Income Tax Officer. The amount of Rs. 25,000/- appearing in the year 1119 could not be considered by the Income Tax Officer as the assessment for the year 1120 could not be reported u/s 47 of the Act. It is .also seen that the Income Tax Officer has in his as assessment order for 11.21 taken into account a sum of Rs. 21,000 and odd as profits for plumbing contract accounts. As this contract was actually completed in 1.1.19, it is necessary to examine in detail tile accounts of the contract and arrive at the actual profit that the Assessee has made on this account.

"The Assessee is also a dealer in Motor Spares and Dunlop Tyres. It is understood that he is in receipt of substantial commission from the Dunlop Tire Company. But the profits disclosed by the accounts are very low every year. He is reported to have) substantial investments outside the State such as Mysore Loans, Government of India Securities, Shares in Indian Cement Ltd., etc., as" also inside the State in the names of his wife, and minor children.

3. In the- circumstances, Government consider that there are prima facie reasons to hold that the Assessee has to a substantial extent evaded payment of Income Tax for die year 1120. The case is" therefore referred to the Income Tax Investigation Commission, for investigation and report u/s 5 of the Travancore Taxes on Income (Investigation Commission) Act, 1124. Detailed and full enquiry on the investments of the party, in different names in and outside the State, will also be made and reported upon with a view, to facilitate the proper assessment for the subsequent years.

Apparently the case relates only to the evasion of payment of Income Tax for the year 1120 and the fact that the Petitioner was called upon to produce his accounts, bank pass books and other such documents not merely in respect of that year but for the years 1119-1123 as per notice No. 1739 dated 20-9-1.952 cannot possibly enlarge the ambit of the in-1 vestigarion directed by the Government.

6. In paragraph 2 of .the affidavit on behalf of the Department dated 23-7-1955 it is stated that the investigation proceedings were commenced after .the assessment for 1122-24 had been completed. . This is a mistake and the mistake has been corrected by a subsequent affidavit dated ''9-12-1955 explaining the real position and pointing out the fact that the investigation proceedings were started earlier than the assessment for 1122-24.

7. The second point urged is that Section 13 of the Indian Finance Act, 1950, does not save the provisions of the Travancore Income Tax Act, 1121, for purposes of re-assessment and the notices should be considered as invalid on that ground. This question was dealt with by a Full Bench of this Court in Lakshmna Shenoy v. Income Tax Officer, 1953 Ker LT 725 : AIR 1954 Ker 137) (A), as follows:

Both the words ''assessed'' and ''re-assessed occur in Section 44 of the Cochin Income Tax Act, 1117, and Section 47 of the Travancore Income Tax Act, 1121, and the contention of the Petitioner is that as ''re-assessment'' is not specified in Section 13 of the Indian Finance Act, 1950, the power to ''reassess has ceased to exist and is not available any longer. This also is a contention which we are not prepared to accept. The words ''levy, assessment and collection'' as we understand them include all the processes by which the tax is ascertained, demanded and realised and ''re-assessment'', being one of those processes comes within the ambit of the pniaseulogy employed.

8. A contrary view has been taken by the Mysore High Court in City Tobacco Mart Avenue Road Bauglore City v. Income Tax Officer, Urban Circle, Bangalore AIR 1955 Karn 49 (B) and K. N. Guru-swamy v. Income Tax Officer AIR 1955 Karn 99 (C). According to that court the word ''assessment'' occurring in Section 13 of the Indian Finance Act referred to assessment u/s 23 and not proceedings u/s 34 and consequently "Section 13 of the Indian Finance Act which repealed the

Mysore Income Tax Act did not save Section 34 of the Mysore Income Tax Act so as to entitle the Income Tax Officer to re-open under that Section assessment made prior to 1-4-1950".

9. The conclusion, it would appear, has been arrived at essentially on the basis of (1938) 6 ITR 414 (Privy Council) , and an agreement entered into between the President of India and the Raj Pramukh of Mysore in pursuance of articles 278, 291, 295 and 306 of the Constitution by which, subject to certain modifications, they accepted the recommendations of the Indian States Finances Enquiry Committee, 1948-49. The facts of 1938 6 ITR 414 : AIR 1938 PC ITS) (D), are summarised in the head-note as follows:

On January 17, 1927, the assesses were registered as a firm and they were assessed u/s 23 (4) on an income of Rs. 1,25,000 at the maximum rate. Being a registered firm no super tax was levied. A notice of demand was also made be-'' fore March 1927. On February 13, 1928, the Commissioner in exercise of his powers u/s 53, cancelled the order registering the assesses as a firm and directed the Income Tax Officer to take necessary action. The Income Tax Officer accordingly assessed the firm to super tax on May 4, 1929.

and on these facts the Privy Council held:

(1) that the assessment made on 17-1-1927 was final both in respect of Income Tax and super tax;

(2) that the action taken by the Income Tax Officer on 4-5-1929 was out of time though taken in '''' pursuance of the directions of the Commissioner; ; and

(3) that the order of 4-5-1929 could be justified, if at all, only as one made not u/s 23 (4) but u/s 34 or Section 35 of the Indian Income Tax Act, 1922.

10. Regarding the meaning of tire word ''assessment all that Lord'' Romer said in delivering the judgment of the Board was:

One of the peculiarities of most Income Tax Acts is that the word ''assessment'' is used as meaning sometimes the complication of income, sometimes the determination of the amount of tax payable and 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

The question as to whether the word ''assessment'' will include also ''re-assessment'' when it occurs in a phrase like levy, assessment and collection'' and the phrase itself is part of a section in an enactment like a Finance Act was not before their Lordships and was not discussed or decided by them.

11. Ext. Ill is a copy of the agreement between file President of India and the Raj Pramukh of Travancore-Cochin in pursuance of Articles 278, 29.1, 295 and 306 of the Constitution. Article 291 deals with, the Privy Purse of Rulers and Article 306 with to a power of certain Part B ''States to impose restriction on trade and commerce and neither of the articles has anything to do with the question in

controversy. Article 278 provides that notwithstanding anything is the Constitution, the Government of India may, subject to certain provisions, enter into an agreement with the Government of a Part B State with respect to ''the levy, and collection of any tax or duty livable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of Go. I of Part XIX and Article 295 provides that:

(1) As from the commencement of the Constitution -.

(a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part '' B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be-purposes of the Union relating to any of the matters enumerated in the Union List, and

(b) all. rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes.'' of the Government of India relating to any of the matters enumerated in the Union List, subject to any agreement entered into in that behalf of the Government of India with .the Government of that State.

(2) Subject as aforesaid, the Government of each State in Part B of the First Schedule shall, as from'' the commencement of the Constitution, be the successor of the Government of the corresponding Indian" State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to Clause (1).

We see nothing in Articles 278 and 295 or Ex. Ill which militates against the conclusions reached by the Fulll Bench in 1953 Ker LT725 : AIR 1954 Trav-Co 137)1 (A).

12. It follows that these petitions have to be dismissed and they are hereby dismissed; but in the circumstances of the case without any order as to costs.