(2015) 05 AHC CK 0183

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5808 of 2015

Ratti Lal APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:
Constitution of India, 1950 — Article 11, 246, 276, 276 (2), 276(1)

Citation : (2015) 6 ADJ 8

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : B.K. Srivastava, for the Appellant; J.P. Singh and Manvendra Nath Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J—Heard Sri B.K. Srivastava, learned counsel for the petitioner, Sri A.K. Upadhyay, learned standing counsel for the Respondent Nos. 1 and 2 and Sri J.P. Singh, learned counsel for the Respondent No. 3. In this writ petition the petitioner has prayed for a writ, order or direction in the nature of certiorari to quash the order dated 17.4.2014 passed in Appeal No. 16/19/20/25A of 2007 and the demand notice dated 20.8.2007.

2. Briefly stated the facts of the present case are that a notice dated 20.8.2007 was issued to the petitioner by the Respondent No. 3 to levy circumstances and property tax for the financial year 2005-06 and 2006-07 at Rs. 4,800/- per year total Rs. 9,600/-. It is the case of the petitioner that he is a small shop keeper having his general merchant shop in village Palthi, Pargana-Mahul, Tehsil-Phoolpur, District Azamgarh. Against the aforesaid notice dated 20.8.2007 he preferred an appeal before Respondent No. 2 which has been dismissed by the impugned order dated 17.4.2014. For the years 1990 to 2003 the petitioner was assessed to circumstances and property tax at Rs. 300/- vide assessment order dated 24.6.2004.

3. Learned counsel for the petitioner submits that the circumstances and property tax levied by the impugned notice and upheld by the impugned appellate order is wholly without authority of law inasmuch as Article 276 of the Constitution of India permits the levy to a maximum of Rs. 2,500/- per annum while circumstances and property tax imposed by Respondent No. 3 is Rs. 4,800/- per annum. Thus imposition of tax by the Respondent No. 3 beyond the limit fixed under Article 276 of the Constitution of India, is wholly invalid. He relies upon the decisions of Hon''ble Supreme Court in the cases of Commissioner, Quilon Municipality and Another Vs. M/s. Harrisons and Crossfield Ltd., Quilon, AIR 1965 SC 1174 : (1965) 1 SCR 581 , Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur, AIR 1970 SC 1002 : (1970) 2 SCC 267 , Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia, AIR 1962 SC 1073 : (1962) 3 SCR 70 Supp and Poona City Municipal Corporation Vs. Dattatraya Nagesh Deodher, AIR 1965 SC 555 : (1964) 8 SCR 178 .

4. He has also drawn the attention of this Court to the judgment of Hon''ble Supreme Court in the case of Cantonment Board, Mathura Vs. Krishna Bricks and Lime Factory, (1996) 7 AD 80 : (1996) 8 JT 180 : (1996) 6 SCALE 510 : (1996) 6 SCC 72 : (1996) 6 SCR 135 Supp . He further submits that the demand has been created by the respondent No. 3 vide impugned demand bill dated 20.8.2007 for the year 2005-06 and 2006-07 in violation of principles of natural justice and the appeal under Section 135 of the Act has been dismissed by the respondent No. 2 vide impugned order dated 17.4.2014 without even touching the merits of the case completely ignoring the grounds raised in the appeal and, therefore, both deserves to be set aside.

5. Learned counsel for the Respondent No. 3 submits that the tax imposed by the Respondent No. 3 under the provisions of the Uttar Pradesh (Kshetra Panchayat and Zila Panchayats) Adhiniyam, 1961 read with Zila panchayat Azamgarh (Vibhav aur Sampatti Kar Aropan, Nirdharan aur Vasuli) Niyamawali-2003 is a composite tax and, therefore, limit fixed under Article 276 (2) of the Constitution of India shall not apply. In support of his submission he relied upon the Full Bench judgment of this Court in the case of R.R. Engineering Co. Vs. Zila Parishad, Bareilly and Another, AIR 1970 All 316 : (1969) 39 AWR 534 , the judgments of Hon''ble Supreme Court in the case of All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, AIR 2007 SC 2990 : (2008) 5 CompLJ 488 : (2007) 211 CTR 449 : (2007) 120 ECC 451 : (2007) ECR 451 : (2007) 293 ITR 406 : (2007) 10 JT 305 : (2007) 10 SCALE 178 : (2007) 7 SCC 527 : (2007) 9 SCR 147 : (2007) 7 STR 625 : (2007) 10 STT 166 : (2007) 9 VST 126 : (2007) AIRSCW 5437 : (2007) 6 Supreme 452 and R.R. Engineering Co. Vs. Zila Parishad, Bareilly and Another, AIR 1980 SC 1088 : (1980) 3 SCC 330 : (1980) 3 SCR 1 .

6. Learned standing counsel relies upon the Judgment of Hon''ble Supreme Court in the case of Vivekanand School through Headmaster Vs. President of Zila Panchayat and Others, AIR 2009 SC 982 : (2009) 1 JT 45 : (2009) 1 SCC 702 :

(2009) AIRSCW 58 : (2008) 8 Supreme 746 to contend that the tax imposed by the Zila Parishad is a tax on circumstances and property which is composite tax and the word ''circumstances'' means a man''s financial position, his status as a whole depending, among other things, on his income from trade or business.

7. I have carefully considered the submissions of learned counsels for the parties.

8. The only question involved in this writ petition is as to whether the circumstances and property tax imposed under the provisions of Zila panchayat Azamgarh (Vibhav aur Sampati Kar Aropan, Nirdhan aur Vasuli) Niyamawali-2003 subject to maximum of Rs. 6,000/- per annum on any person, is permissible being beyond the maximum limit fixed under Article 276 of the Constitution of India?

9. Section 119 of the Act confers power on Zila panchayat to impose or to continue the imposition of tax on circumstances and property or any other tax which the State Legislature has the power under the Constitution of India to impose in the State and of which imposition by the Zila Panchayat has been authorized by the State Government. Section 123 provides for framing of preliminary proposals for imposition of tax. Section 125 of the Act confers power on the State Government to sanction proposals of Zila Panchayat.

10. It appears that in exercise of powers conferred under Section 123 read with Section 297 of the Act, the aforesaid "Zila Panchayat, Azamgarh (imposition, assessment and collection of circumstances and property tax) Rules 2003" has been framed as stated in paragraph 3 of the short counter-affidavit filed on behalf of Respondent No. 3. Rule 2(b) defines the word Tax" to mean a tax under Section 119(a) of the Act i.e. the circumstances and property tax. Rule 5 of the Rules provides for rate of tax at the rate of Rs. 3 paisa per rupee subject to maximum of Rs. 6,000/- per annum on any person.

11. It is undisputed that the circumstances and property tax imposed under the Rules 2003 is a tax referable to Article 276 of the constitution of India. Prior to the Constitution (60th Amendment) Act 1988, Article 276 stood as under:

"276. Taxes on profession, trade, callings and employments.--

1. Notwithstanding anything in Article 246, no law of the legislature of a state relating to taxes for the benefit of the state or of a municipality, district board a, local board or other local authority therein in respect of professions, trades, calling or employments shall be invalid on the ground that it relates to a tax on income.

2. The total amount payable in respect of any one person to the state or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum:

Provided that if in the financial year immediately proceeding the commencement of this Constitution there was enforce in the case of any state or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate of which exceed two and fifty rupees per annum, such tax may continue levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

3. The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments."

12. By the Constitution of India 60 the Amendment Act 1988 the word two hundred fifty rupees'' occurring in Clause 2 of Article 276 was replaced by the words To thousand five hundred rupees'' and the proviso to Clause (2) of Article 276 was omitted w.e.f. 20.12.1988. Thus Article 276 as amended by the Constitution (60th Amendment) Act 1988 authorised the imposition of tax by a municipality, District Board, Local Board or other authority in respect of professional trades, calling or employment to maximum of Rs. 2,500/- per annum.

13. Rule 4 (1) of the Rules 2003 provides that the tax shall be levied on the basis of total taxable income of assessee of the previous year provided no tax shall be levied or collected if in the previous financial year the total taxable income of an assessee does not exceed Rs. 20,000/-. Sub rule 2 provides that the total taxable income of an assessee shall be computed on the basis of circumstances and property of assessee which includes his salary, wages, profit from trade, bonus, dividend and interest.

14. The levy of circumstances and property Tax by Zila panchayat came for consideration in various judgments. In the case of R.R. Engineering Co. Vs. Zila Parishad, Bareilly and Another, AIR 1980 SC 1088 : (1980) 3 SCC 330 : (1980) 3 SCR 1 , Hon''ble Supreme Court observed as under:

"10. The three learned Judges who constituted the Full Bench of the High Court in R.R. Engineering Co. (supra) delivered separate judgments, coming ultimately to the same conclusion though not by the same process of reasoning. It was urged before the High Court that the tax on ''circumstances and property'' was a tax on professions, trades, callings and employments and therefore the total amount of tax in respect of any one person could not, by reason of Article 276(2) of the Constitution, exceed Rs. 250 per annum. It was further contended that though the proviso to Article 276(2) enables the levy of a tax on professions, trades, callings and employments in excess of Rs. 250/- per annum if in the financial year immediately preceding the commencement of the Constitution the tax was being imposed, the authority which is now seeking to impose the tax being different from the one which was imposing the tax immediately before the Constitution came into force, the proviso would have no application. Mr. Justice R.S. Pathak and Mr. Justice M.H. Beg rejected the contention that the tax on ''circumstances and property'' was a tax on professions, trades, callings or employments. Consequently, they held that the limitation contained in Article 276(2) of the Constitution to the effect that the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum was not applicable. Justice Pathak held that the tax on circumstances and property is a composite tax and although a person''s status and property are two intertwined strands which enter into the composition of the tax, the tax cannot be considered as consisting of two distinct taxes under a single denomination. According to the learned Judge, the tax on circumstances and property is a single tax possessing altogether a separate and distinct identity from other taxes and could neither be equated with a tax on professions, trades, callings or employments nor with a tax on property; that is to say, the constituent elements which enter into the composition of the tax could not be separated. On the question whether the circumstances and property tax levied by District Boards prior to the Constitution could be levied thereafter, the learned Judge relied upon Article 277 of the Constitution as authorising the continued imposition of the tax. When the Constitution came into force, said the learned Judge, circumstances and property tax did not find a place in any of the three Lists of the Seventh Schedule and therefore it fell under the residuary entry, namely, entry 97 of List I which refers to any matter not enumerated in any other entry in List I or in any of the entries in Lists II and III.

12. Tripathi, J. followed an earlier Full Bench judgment of the Allahabad High Court and held that the tax on circumstances and property was in the nature of a tax on professions, trades, callings or employments. The limitation prescribed by Article 276(2) would, therefore, be attracted, but the proviso to that article saved the imposition of the tax even if it was in excess of Rupees two hundred and fifty per annum because the tax was in force in the financial year immediately preceding the commencement of the Constitution and the Parliament had not by law made any provision to the contrary. The contention, that the Proviso would apply only if the authority imposing the tax after the enactment of the Constitution was the same which did so immediately prior to the Constitution was rejected by the learned Judge on the ground that what was important for the purposes of the Proviso was the identity of the purpose for which the tax was and is imposed, and the area of its operation, and not the identity of the authority imposing the tax.

14. Before us also, the main controversy centred round the application of Article 276, the contention being that the imposition of the impugned tax in excess of Rs. 250 per annum is invalid. It was urged by Mr. E.C. Agarwala, who appears on behalf of the appellant in Civil Appeal No. 564 of 1973, that although Entry 60 in

List II empowers 8 State Legislatures to levy tax on professions, trades, callings and employments, the exercise of that power is necessarily limited by Article 276(2) of the Constitution. The constitutional limitation, according to the learned counsel, contained in Article 276(2) must be given its full effect and that limitation cannot be transgressed by the State Legislature by adopting the subterfuge of imposing a consolidated tax by clubbing-up two or more entries in List II. Counsel further contended that the State Legislature cannot over-reach its taxing power by making an artificial definition of words and expressions used in the legislative entries. Just as it cannot, by an artificial definition of ''sale of goods'', exercise a power to legislate in respect of a subject matter outside its sphere, it cannot exercise the power to levy a tax on ''circumstances'' by an artificial and colourable understanding of that expression so as to acquire the power to impose a tax on income. Lastly, it was contended by Shri Agarwala, and by Shri Yogeshwar Prasad who appears in the companion appeal, that the power to levy a tax on ''circumstances not being incidental to the power to tax professions, trades, etc. the doctrine of pith and substance had no application and could not save the impugned tax on circumstances and property.

17. The Full Bench decision under appeal in the instant case, R.R. Engineering Co. (supra) has taken the same view of the nature of the tax on circumstances and property by holding that it is not a tax on income but is a tax on a man''s financial position, his status as a whole, depending upon his income from trade or business. Earlier another Full Bench of the Allahabad High Court had held in Zila Parishad Muzaffarnagar v. Jugal Kishore, that the tax on circumstances and property is fundamentally distinct from and cannot be equated with income tax, that it is not covered by item 82, List I, Schedule 7, of the Constitution and that it is essentially a tax on status or financial position combined with a tax on property. These decisions correctly describe the nature of the tax on circumstances and property. We affirm the view taken therein, especially that the aforesaid tax is not a tax on income.

18. But even though the impugned tax is not a tax on income, it is necessary to consider whether it is within the legislative competence of the State legislature and, if so, under which entry it would fall. The reason for such an inquiry is mainly two-fold: firstly, even if the tax on circumstances is within the legislative competence of the State legislature, being referable to entry 60 of List II which relates to taxes on professions, trades, callings and employments, it cannot exceed the limit of two hundred and fifty rupees per annum prescribed by Article 276(2) of the Constitution, unless the proviso to that Article 11 is attracted: secondly, if the tax is beyond the legislative competence of the State legislature, being a composite tax not liable to be split up into distinct component parts, it will be necessary to examine whether the tax is saved by Article 277 of the Constitution.

19. Article 276(1) of the Constitution provides that notwithstanding anything in Article 246, no law of the legislature of a State relating to taxes for the benefit of

the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income. By clause (2) of that Article, the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum. The proviso to this clause says that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

20. Entry 49 of List II Seventh Schedule, relates to "taxes on lands and buildings" while Entry 60 of the same list relates to "taxes on professions, trades, callings and employments''''. Having already considered the true nature of the tax on circumstances and property, we are of the opinion that it is, in any event and at the least, referable to Entries 49 and 60 of List II. The profession, trade, calling or employment which a person pursues and the lands and buildings which he owns determine the status which he occupies. The impugned tax is a composite tax one, of its components being the ''circumstances'' of the assessee. By ''circumstances'' is meant his financial position, his status as a whole, which depends, inter alia, on his income from his lands and buildings and from his trade or calling. That is the view which was taken by a Full Bench of the Allahabad High Court in Zila Parishad, Muzaffarnagar and another v. Jugal Kishore Ram Swarup and another (supra). Broome, J. who spoke for the Court in that case observed that it was clear from the very nomenclature of the tax that it was of a composite character and consisted of two components: a tax on property and a tax on circumstances. The tax on property was confined to immovable property and fell within the jurisdiction of the State Legislature by virtue of Item 49 of the State List while the tax on circumstances, that is to say, status or financial position, meant the tax on man''s trade, business, profession or employment which was covered by Item 60 of the State List.

21. This question was also considered by a Special Bench consisting of Five Judges of the Allahabad High Court in The Notified Area Committee and another v. Sri Ram Singhasan Prasad Kalwar. Mr. Justice S.N. Dwivedi who delivered the Judgment of the Special Bench traced the entire history of the impugned tax in reference to three periods: (1) the period prior to the 1935 Constitution Act; (2) the period between 1935 and 1950; and (3) the post-Constitution period. After a careful examination of the nature of the tax the learned Judge summed up the position thus:

"To sum up, the history of the tax on circumstances and property after 1935 definitely shows that it was not a distinct and separate impost. The Government of India Act, 1935 and the Constitution treat it as a composite tax as its name suggests. As its constituents are already covered by one or the other entry in the legislative Lists, it is not enumerated as a category in the Lists as it was enumerated in the White Paper. "The conclusion to which the Special Bench came was that a tax on circumstances and property is a composite tax, that its components are varied, but that two of such components are firstly a tax on trades, callings, professions and employments and secondly, a tax on lands and buildings. In coming to this conclusion, reliance was placed by the learned Judge on the decision of the Supreme Court in Pandit Ram Narain (supra) and that of the Full Bench in the District Board of Farrukhabad (supra). But the amplification of the legislative authority which the Special Bench made is significant. It did not say as Broome, J. said in the Full Bench decision in the Zila Parishad, Muzaffarnagar (supra) that the tax on circumstances and property is referable only to two entries in List II namely, Entries 49 and 60. According to the Special Bench, the tax was wide enough to cover certain other items in List II, like Item 58 which relates to "taxes on animals and boats". We are of the opinion that the Special Bench was right in coming to this conclusion. Accordingly, we affirm its view that the tax on circumstances and property is referable to items 49 and 60 of List II of the Seventh Schedule, and amongst other items, to item 58 of that List. The validity of the tax has therefore to be upheld."

22. While doing so, we would like to utter a word of caution. The fact that one of the components of the impugned tax, namely, the component of ''circumstances'' is referable to other entries in addition to Entry 60, should not be construed as conferring an unlimited charter on the local authorities to impose disproportionately excessive levies on the assessees who are subject to their jurisdiction. An excessive levy on circumstances will tend to blur the distinction between a tax on income and a tax on circumstances. Income will then cease to be a mere measure or yardstick of the tax and will become the very subject matter of the tax. Restraint in this behalf will be a prudent prescription for the local authorities to follow.

23. All that remains to be done is to express our inability to accept as correct the view taken by Mr. Justice R.S. Pathak and Mr. Justice M.H. Beg in R.R. Engineering Co. (supra) that by reason of the fact that the circumstances and property tax is a composite tax and since the element of ''property'' necessarily enters into that composition, the tax cannot be identified as a tax on professions, trades, callings or employments. Our conclusion that the tax is referable, inter alia, to entries 49 and 60 of List II must necessarily result in the rejection of that view. The learned Judges were of the opinion, with which we are respectfully unable to agree, that since the tax on circumstances and property did not find place as an entry expressly enumerated in any of the three Lists of the Seventh Schedule, it falls under the residuary entry, namely, Entry 97 of List I. On that basis they held that Article 277 of the Constitution would save the tax since it

was within the competence of the Parliament to impose it. In the view that we have taken, namely, that the impugned tax falls within the competence of the State Legislature by virtue of entries 49 and 60, inter alia, of List II, this part of the reasoning of the learned Judges has to be rejected. It is unnecessary and in fact erroneous to take resort to Article 277 of the Constitution for the purpose of saving the tax on circumstances and property. The mere name of a tax does not bear on legislative competence and the absence of express enumeration of a tax by a particular name will not justify the tracing of legislative authority to the residuary entry. What is true in other jurisdictions is true in this branch of law also, namely, that one must have regard to the substance of the matter and not to the form or label. We may also mention that in so far as the Town Area Committees are concerned, Article 277 will not save the impugned tax since it was levied by the Town Area Committee in pursuance of the power conferred by clause (f) of Section 14 of the Town Areas Act, which was introduced by a post-Constitution amendment. We accept the reasoning of Mr. Justice S.N. Dwivedi in The Notified Area Committee (supra) by which the Special Bench expressed its disagreement with the view taken by the two learned Judges in R.R. Engineering Co (supra) in regard to the application of Article 277 on the basis that the residuary entry is attracted.

(Emphasis submitted by me)

15. In the case of Vivekanand School through Headmaster Vs. President of Zila Panchayat and Others, AIR 2009 SC 982 : (2009) 1 JT 45 : (2009) 1 SCC 702 : (2009) AIRSCW 58 : (2008) 8 Supreme 746 , Hon''ble Supreme Court considered the levy of circumstances and property Tax under the U.P. Zila panchayat (Imposition, Assessment and Collection of Circumstances and Property Tax) Rules, 1994 and held it to be a composite Tax being tax on a man''s financial position, his status as a whole depending among other things, on his income from trade or business.

16. In the case of All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, AIR 2007 SC 2990 : (2008) 5 CompLJ 488 : (2007) 211 CTR 449 : (2007) 120 ECC 451 : (2007) ECR 451 : (2007) 293 ITR 406 : (2007) 10 JT 305 : (2007) 10 SCALE 178 : (2007) 7 SCC 527 : (2007) 9 SCR 147 : (2007) 7 STR 625 : (2007) 10 STT 166 : (2007) 9 VST 126 : (2007) AIRSCW 5437 : (2007) 6 Supreme 452 Hon''ble Supreme Court held that Article 276 will not apply to levy of Tax on "circumstances and property" which is referable to entry 49 and entry 60 of List-II and amongst other items to entry 58. Thus the limit fixed under the Rules in question cannot be said to be invalid.

17. However, I find substance in the last submission of the petitioner that the impugned demand bill was issued by the respondent No. 3 without proper opportunity of hearing and the Respondent No. 2 rejected the appeal without considering the merits of the case. I find that while passing the impugned appellate order the respondent No. 2 has not considered the merits of the case even though it was specifically raised by the petitioner.

18. In view of the above discussions, the impugned demand bill as well as the impugned appellate order dated 17.4.2014 passed by the respondent No. 2 cannot be sustained and are hereby set aside. The matter is remitted back to the respondent No. 3 to pass an order afresh in accordance with law after affording opportunity of hearing to the petitioner, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order. In result, writ petition succeeds and is hereby allowed to the extent indicated above.

