

(1959) 10 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 1506 of 1956

S. Chattanatha Karayalar

APPELLANT

Vs

Income Tax Officer, Nagarcoil and Another

RESPONDENT

Date of Decision : 23-10-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 17
Constitution of India, 1950 — Article 226
Finance Act, 1950 — Section 13
Income Tax Act, 1922 — Section 5, 5(7)
Travancore Income Tax Act, 1121 — Section 110(1), 47, 7(8)

Citation : AIR 1960 Mad 320 : (1960) 38 ITR 325

Hon'ble Judges : Ramachandra Iyer, J; Rajagopalan, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.

(1) This is a petition under Art. 226 of the for the issue of a writ of certiorari, calling for the records relating to the assessment of the petitioner to

Income Tax for the year of account, 1946-47 (M. E. 1122) under the provisions of S. 47 of the Travancore Income Tax Act, 1121, quashing the

same, and for allied reliefs. The petition was originally filed in the High Court of Travancore-Cochin. Rule nisi was issued by that court. As the

assessment was made by the Income Tax Officer, Nagarcoil, which place by virtue of the States Re-organisation Act, became part of the Madras

State, the petition was transferred to the file of this court.

(2) The petitioner is a resident of Shencottah, Admittedly, during the year of account, he was a karta of a joint Hindu family, which, amongst its

other properties, had a business in the manufacture and sale of salt. The family was also entitled to a share in an unregistered firm, styled,.

S.M.K.M. Allom. It is claimed that, about four years subsequent to the year of account, the family ceased to be undivided. But the statutory enquiry under S. 25-A of the Income Tax Act, has not yet been completed, and it is unnecessary, for the purpose of this petition, to pursue that matter.

(3) In regard to the assessment for the year of account 1946-47, there was a dispute as to the officer who was to assess the petitioner. The

Commissioner of Income Tax, Mysore cum Travancore-Cochin, who had jurisdiction over the assessment relating to the petitioner, passed an

order on 7-8-1959, that the Income Tax Officer, Nagarcoil, should be the officer to assess the income of the assessee. Thereupon, the Income

Tax Officer, Nagarcoil, assessed the petitioner to Income Tax on 22-9-1950.

(4) On 25-9-1951, the Commissioner of Income Tax, Mysore cum Travancore-Cochin, purporting to act under S. 5(7-A) of the Indian Income

Tax Act, transferred the assessment file relating to the petitioner from the file of the Income Tax Officer, Nagarcoil, to the Income Tax Officer on

special duty at Trivandrum. In the following year, the file relating to the petitioner was successively transferred from the Income Tax Officer on

special duty, Trivandrum, to the Income Tax Officer, Trivandrum, and the Income Tax Officer, Special Circle, Trivandrum. The latter officer was

functioning in regard to the assessment of the petitioner, since 3-7-1954. During the course of assessment for subsequent years, that officer

appears to have received certain information which it was claimed led him to discover that the assessee had concealed his income of the year

1946-47 (M. E. 1122).

He, thereupon, initiated proceedings under S. 47 of the Travancore Income Tax Act, 1121, which corresponded to S. 34 of the Indian Income

Tax Act. A notice was issued to the assessee on 27-4-1955, calling upon him to submit a revised return for that year. To that notice, there was no

response from the assessee. Subsequently, on 2-7-1956, a notice was issued under S. 29(4) of the Travancore Income Tax Act, asking the

assessee to produce account books relating to his income. On 16-7-1956, the assessee wrote a letter to the Income Tax Officer, Special Circle,

Trivandrum, objecting to his jurisdiction to issue the notice. By the very same letter however, he requested an adjournment of the case to a day

after the 10th of September of that year.

It was found that compliance with the request was impossible, as re-assessment of the escaped income had to be completed before 16-8-1956,

that is, within a period of eight years from 16-8-1948, the end of the year of assessment. The officer however granted a shorter time and posted

the matter to 27-7-1956, directing the petitioner to produced all the account books of the family, together with all the relevant papers. In the

meanwhile, that is, on 19-7-1956, the Commissioner for Income Tax passed an order, as a result of which, the assessment file relating to the

petitioner was finally transferred to the Income Tax Officer, Nagarcoil. On receipt of the file, the first respondent posted the case for hearing on 3-

8-1956, by issuing a notice under S. 29(4).

The notice was returned unserved by the process-server, stating that the assessee was not in his residential house at Trivandrum. The Officer,

thereupon, effected service of the notice by affixture on the business premises of the firm, S. M. K. M. Allom, on 3-7-1956; that notice intimated

that the case was posted for enquiry to 8-8-1956. The assessee did not appear. The first respondent, who had to complete the re-assessment by

16-8-1956, assessed the petitioner to a tax under S. 30(4) of the Travancore Income Tax Act, corresponding to S. 23(4) of the Indian Income

Tax Act, by his order dated 9-8-1956. The assessee alleging that the remedies provided by the Income Tax Act would be expensive and

circuitous filed the present application under Art. 226 of the, praying substantially that the first respondent should be prohibited from taking any

steps in pursuance of the order of assessment.

(5) The validity of the assessment was challenged before us on substantially three grounds First the re-assessment proceedings were without

jurisdiction, as the notice issued under S. 47 of the Travancore Income Tax Act, 1121, corresponding to S. 34 of the Indian Income Tax Act, was

issued by an Officer, not validly authorised. According to the assessee, the Income Tax Officer, Special Circle, Trivandrum, who issued the notice

under S.47 of the Travancore Income Tax Act, had no legal seisin of the case, as the successive orders of transfer by the Commissioner of Income

Tax Act, Mysore cum Travancore-Cochin were had, and not in accord with the provisions of S. 7(8) of the Travancore Act.

Second, there was no proper or valid service of notice of the enquiry, particularly after the transfer of the file from the Income Tax Officer,

Trivandrum, to the Income Tax Officer, Nagarcoil, as a result of which, the assessee had no opportunity to put forward his case, and therefore, the

assessment was opposed to principles of natural justice. Third, there was no jurisdiction in the officer to initiate the proceedings on the basis of

escaped assessment, as it had not been disclosed that any information was received by that officer to discover the concealment, and that the re-

assessment only revealed a mere change of opinion of the officer.

(6) Before considering the objections it has to be seen whether in the circumstances of the case, the petitioner, who has not availed himself of the

remedies provided under the Income Tax Act, would be entitled to the issue of a writ of certiorari under Art. 226 of the. The Income Tax Act

provides an appeal against an order of assessment and further remedies in case the assessee is aggrieved by the order of the appellate authority.

The existence of an alternative remedy has always been considered as a material circumstance to be taken into account, when a court is called

upon in the exercise of its discretion to issue a writ of certiorari under Art. 226 of the.

If the petitioner was aggrieved with the order of the first respondent, whether it was a case of improper assumption of jurisdiction, want of

sufficient opportunity to put forward his case or of erroneous or excessive assessment, he had at least three remedies under the Income Tax Act

itself. (1) The petitioner could have raised objections and got the question of the jurisdiction of the Income Tax Officer. Special Circle, Trivandrum,

settled immediately after the receipt of the notice of re-assessment, (2) If the notice had not been properly served or if he had no reasonable

opportunity to put forward his case he could have applied to the Income Tax Officer under S. 27 of the Indian Income Tax Act, or the

corresponding provision in the Travancore Act, if that was necessary. (3) He could have appealed against the order of assessment. He did none of

there but was content with writing a half hearted letter a year after the service of notice on 16-7-1956, objecting to the jurisdiction of the officer.

That letter in a way would amount to a submission to the officer's jurisdiction, notwithstanding an objection thereto, which the Income Tax

authorities were competent to decide as it requested time for producing the accounts and participating in the enquiry. Further the transfer of the file relating to the petitioner was made as early as 1953. That Officer presumably assessed the petitioner, at least, for subsequent years, till 1956. It does not appear that at any earlier stage there was any objection to the annual assessments. The circumstances referred to above would appear to show that there was a submission to the jurisdiction of that officer. These considerations would by themselves be sufficient for us to decline to exercise our discretion in favour of the petitioner in the exercise of the jurisdiction under Art. 226. But there is one further reason more decisive than the others, namely, that the issue of any writ at this stage, quashing the order of assessment, would place the Income Tax department in a disadvantageous position, as the proceedings for re-assessment could not be started de novo. The period within which re-assessment proceedings could be initiated under S. 34 (S. 47 of the Travancore Income Tax Act) has long since expired. If the petitioner had invoked any of the three alternative remedies, to which reference was made, it would have been open to the department to rectify the mistake, if any, and to proceed with the assessment of the escaped income. It would not be so, if we were to exercise our discretionary jurisdiction under Art. 226. We should, therefore, decline to issue the writ sought, even if the petitioner is otherwise entitled to it.

(7) In this view, it would be unnecessary to deal with the various contentions urged on behalf of the petitioner. But as the question has been argued before us, we shall proceed to deal briefly with them. It was first contended that the Commissioner of Income Tax had no jurisdiction to transfer the file relating to the assessee from the Income Tax Officer, Nagarcoil, to the various officers mentioned previously. The argument proceeded on the following lines. On the date when the transfer was made, the assessment in regard to the year 1947-48, had been completed and, there being no pending proceedings, the Commissioner would have no power to transfer under S. 7(8) of the Travancore Income Tax Act. Secondly, the order of transfer was general in its terms and unrestricted in regard to the period, and should for that reason as well be considered illegal.

The re-assessment proceedings relating as they do to the assessment year 1947

48 M. E. 1123 though started in 1955, would be governed entirely by the provisions of the Travancore Income Tax Act, and that, as S. 7(8) of the Act did not authorise a general order of transfer, the various orders, which contravened that requirement should be held to be invalid. The Income Tax Officer, Special Circle, Trivandrum, would therefore have no power to initiate proceedings.

(8) The provisions of S. 7(8) of the Travancore Income Tax Act corresponded to S. 5(7-A) of the Indian Income Tax Act, before the introduction of the explanation to that section by the Amending Act XXVI of 1956. On that basis reliance was placed on the decision in *Bidi Supply Co. Vs.*

The Union of India (UOI) and Others, . That was a case which arose under S. 5(7-A) of the Indian Income Tax Act, before it was amended. The

Supreme Court held that an order of transfer expressed in general terms, without reference to a case for a particular assessment year actually

pending before an Income Tax Officer, was not authorised by that section, and was, therefore, invalid.

(9) After that decision was rendered the Union legislature amended the Indian Income Tax Act, by introducing an explanation to S. 5(7-A) That

States:

In this sub-section S. 5(7-A) "case" in relation to any person whose name is specified in the order of transfer means all proceedings under this Act

in respect of any year which may be pending on the date of the transfer, and includes all proceedings under this Act which may be commenced

after the date of the transfer in respect of any year.

The effect of the explanation is that, once an order of transfer is made, all the proceedings are transferred, and the Income Tax Officer to whom

the transfer is made would be in a position to continue not merely the pending proceedings, but also to initiate further proceedings, against the

assessee in respect of any year, past or future. That would include a power to reopen under S. 34 of the Indian Income Tax Act, assessment for

any earlier year which had been completed at the time, when the transfer was made. Section 2 of Act XXVI of 1956, which introduced the

amendment states that "the following explanation shall be, and shall be deemed always to have been inserted"..... It cannot be disputed that, if the

explanation to S. 5(7-A) were to apply to the instant case, the Income Tax

Officer, Special Circle, Trivandrum, would have jurisdiction to initiate proceedings under S. 47 of the Travancore Act.

But what is contended is that S. 5(7-A) of the Indian Income Tax Act would not apply, as S. 7(8) of the Travancore Income Tax Act, which

corresponds to S. 5(7-A) before its amendment would alone apply, and the principle of the decision in Bidi Supply Co. Vs. The Union of India

(UOI) and Others, would apply. It has, therefore, to be considered as to how far the provisions of the Travancore Income Tax Act could be

deemed to have been preserved.

(10) As a result of the, there was a political and a subsequent financial integration of the former Indian States with the rest of India Travancore

which was amalgamated with Cochin was a Part B State under the till the Reorganisation of States Act. The Indian Finance Act of 1950,

contained certain provisions having permanent operation and provided for a uniform Income Tax Act for India.

(11) Section 13 of the Indian Finance Act, 1950, so far as it is relevant, states:

If immediately before the first day of April 1950, there is in force in any Part B State other than Jammu and Kashmir,..... any law relating to

Income Tax or super tax, or tax on profits of business, that law shall cease to have effect except for the purposes of the levy, assessment and

collection of Income Tax an super tax in respect of any period not included in the previous year for the purposes of assessment under the Indian

Income Tax Act, 1922, for the year ending on 31-3-1951, or for any subsequent year, or, as the case may be, the levy, assessment and collection

of the tax on profits of business for any chargeable accounting period ending on or before 31-3-1949;

Provided that any reference in any such law to an officer, authority, tribunal, or court shall be construed as a reference to the corresponding officer,

authority, tribunal or court appointed or constituted under the said Act, and if any question arises as to who such corresponding officer, authority

tribunal or court is, the decision of the Central Government thereon shall be final.

If the provision in the Income Tax Act relating to a transfer of a case relating to an assessment from one officer to another could be said to be one

for the purpose of assessment, S. 13 of the Indian Finance Act would keep alive the operation of S. 7(8) of the Travancore Income Tax Act.

(12) Prior to the reorganisation of the States, which came into effect on 1-11-1956, Travancore-Cochin was a Part B state under the, and the

Indian Income Tax Act was made applicable to that State as and from 1-4-1950. The Indian Finance Act, 1950 provided for its application.

Section 3 of that Act effected certain amendments to the Indian Income Tax Act, which were to come into force from 1-4-1950. Section 1(2) was

amended so as to make the Indian Income Tax Act applicable to the whole of India, except the State of Jammu and Kashmir. Section 2(14-A)

which defined "'Taxable territories'" included Travancore-Cochin, as and from the date mentioned above.

The result is that the Indian Income Tax Act alone would apply to the Travancore-Cochin which was a Part B State, except to the limited extent

saved by S. 13 of the Indian Finance Act, 1950. That Section states that the Income Tax Law of the State shall cease to have effect, except, for

the purposes of levy, assessment and collection of Income Tax. It cannot be disputed that the reopening of a closed assessment on the ground that

certain income had escaped assessment would come within the term assessment under S. 13.

Therefore, the provisions of the Travancore Act would apply to re-assessment on the ground of escaped assessment. But the question then would

be, whether the transfer of the file from one officer to another was one for the purpose of levy assessment or collection of Income Tax. If the

answer is in the affirmative, the provisions of S. 7(8) of the Travancore Act, which corresponded to S. 5(7-A) of the Indian Income Tax Act in its

original form, would apply. If, on the other hand, it is held that this statutory provision for transfer of assessment from one officer to another is not

part of the law of levy, assessment or collection, the provisions of S. 5(7-A) of the Indian Income Tax Act read with the explanation would apply.

(13) Section 5(7-A) occurs in Chapter II of the Act. That provides only for the machinery for the performance of various duties under the Act.

That cannot be said to relate either to the assessment, levy or collection.

(14) In the (1938) 6 ITR 414 (Privy Council) the Privy Council observed that the word "'assessment'" was used in the Income Tax Act as meaning

sometimes the computation of income, and sometimes the whole procedure laid down in the Act for imposing liability upon the tax-payer. None of

these elements would include the question as to which officer is to make the assessment in regard to a particular assessee.

An assessment starts with the issue of a notice, calling for a return or with the submission of return where it is voluntarily done. Section 5 of the

Indian Income Tax Act, as well as the corresponding provision in the Travancore Act, is one which authorises the establishment of a machinery for

the purposes of the Act unrelated to the assessment in a given case, though as a machinery it would be essential for that purpose. The question as

to who should assess in a particular case might in one sense relate to the assessment of that individual but it cannot be said to be one for the

purpose of assessment, Section 5(7-A) is concerned with the powers of the superior authorities to transfer the cases on grounds of expediency

and is not based on any vested right in the assessee, though the exercise of the power should be so made as not to cause undue hardship or on

extraneous considerations.

The scope of S. 5(7-A) as amended was considered in Pannalal Binjraj Vs. Union of India (UOI), . It was held that the provision which authorised

a transfer did not violate any fundamental right of an assessee, and it was only if the power was exercised in discriminatory manner or for an

extraneous consideration, the assessee could challenge it in court, provided he had not acquiesced in the jurisdiction of the Income Tax Officer to

whom the case had been transferred, but that, if an assessee had acquiesced in the jurisdiction of the Income Tax Officer, he could not

subsequently object to the jurisdiction of the Officer.

It cannot, therefore, be said that a transfer of an assessment file from one Income Tax Officer to another is one made for the purpose of

assessment as an assessment could be made without such transfer. In our opinion, the provisions of S. 5(7-A) read with the explanation would

apply to the instant case, and the corresponding provision in the Travancore Act, S. 7(8) should be held to have been repealed by S. 13 of the

Indian Finance Act, 1950. It follows that the Income Tax Officer, Special Circle, Trivandrum, had jurisdiction to issue the notice under S. 47 of the

Travancore Income Tax Act. In this view, it is unnecessary to consider whether the petitioner also acquiesced in the jurisdiction of that officer.

(15) It was next contended that the assessment was opposed to the principles of

natural justice, as the assessee had no notice of the proceedings.

Admittedly the notice under S. 34 (S. 47 under the Travancore Act) was served. The service of the subsequent notices is relevant only for

considering the question whether the assessee had sufficient opportunity to place his case. It is difficult to believe that the assessee was wholly

unaware of the proceedings. The Income Tax Officer, by his letter dated 18-7-1956, had intimated the assessee that the assessment had to be

completed before 16-7-1956.

There is no reason to believe that the assessee himself was unaware of the law. When, therefore, the case was posted to 27-7-1956, a person in

the position of the assessee would normally have gone to that officer, and ascertained as to what happened to the case. Strangely enough the

assessee kept silent. It looks as if that both the Income Tax Officer and the assessee were racing for time, the former to complete the assessment

within 16-8-1956 and the latter to thwart it. It is argued that the service of notice by affixture was not authorised by the provisions of the

Travancore Income Tax Act, Section 110(1) of that Act provided.

A notice or requisition under this Act may be served on the person, therein named, either by post or anchal (personal service) as if it were a

summons issued by a court under the Civil Procedure Code, 1100.

It is contended that, in the absence of service of notice post, the service could be by anchal, and that service by affixture was not authorised by that

Act. There is no doubt, the unfortunate ambiguity in the section. It is unnecessary to consider whether that provision authorises service by affixture,

as, in our view, the provisions of the Indian and not the Travancore Income Tax Act would apply in regard to service of notice after the former Act

came into force in the Travancore-Cochin State. Section 63 of the Indian Income Tax Act enables a notice to be served on the person therein

named either by post, or, as if it were a summons issued by a court under the Civil Procedure Code, 1908 (V of 1908). Under Order V Rule 17

Civil Procedure Code, there could be service by affixture, if the defendant could not be found after using all due and reasonable diligence, and

provided the court was satisfied that affixture would be proper in the circumstances of the case.

In the present case, the officer had declared notice under S. 29(4). He himself

took time from no material placed before us to show how that declaration was wrong, and what is more important how it resulted in the denial of an opportunity to the petitioner to put forward his case. In our opinion, the petitioner had more than one opportunity to put forward his case. Admittedly, a notice of reassessment proceedings was given to him. He was asked to submit his return. There was a further notice under S. 29(4). He himself took time from the officer for submitting his accounts, and was also informed that the assessment had to be completed by 16-8-1956. There is, therefore, no substance in the contention.

(16) On the third contention relating to the propriety of the assessment there are very little merits. The officer stated in his order that, during the course of the assessments for the subsequent year's definite information came into the possession of the Department that the assessee was systematically manipulating his accounts, the main device of evasion adopted being reduction of profits by undue inflation of expenses in the manufacture of salt, and that that information led to the discovery that the assessee had concealed the income in the material year.

The original order or assessment was not made on the basis of any comparable case. The expenses given by the assessee, were accepted, though

the quantity of salt manufactured was compared with the registers of the Salt department. Those registers did not and could not have supplied the

actual expenses incurred by the assessee. In the original assessment the income was found after accepting the expenses, as given by the assessee.

When, therefore, it was subsequently revealed that the assessee had inflated the expenses of manufacture, so as to reduce the profit, the first

respondent was fully justified in reassessing the expenditure by taking into consideration the comparable case. In the circumstances, it cannot be

said that there has been any error in the exercise of the jurisdiction of the Income Tax Officer to assess the petitioner.

(17) The petitioner is not, therefore, entitled to the issue of the writ, asked for.

(18) The rule nisi is discharged and petition is dismissed with costs. Counsel's fee Rs. 250.

(19) Petition dismissed.