
(1936) 05 MAD CK 0018
In the Madras High Court

Secretary of State

APPELLANT

Vs

V.M. Meyyappa Chettiar

RESPONDENT

Date of Decision : 01-05-1936

Acts Referred:

Citation : AIR 1937 Mad 241 : (1936) 44 LW 808

Hon'ble Judges : Varadachariar, J;Stodart, J

Bench : Full Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit for a declaration that the plaintiff is not liable to be assessed to Income Tax on the income received by him from his business in Saigon and for recovery of tax levied from him for the years 1929-30 and 1930-31. Issue 1 in the case raised the question whether the suit was not barred by Section 67, Income Tax Act 11 of 1922. Dealing with this point as a preliminary issue, the District Munsif dismissed the suit as barred by that section. The lower appellate Court was of opinion that the suit would be maintainable if the assessment was ultra vires or had been made without jurisdiction. In view of the allegations in the plaint, it held that the Court must decide on evidence whether the plaintiff was permanently residing in French territory, as, in that case, any income there received by the plaintiff from the Saigon business would not be income assessable under the Act. It recorded as concession by the plaintiff's vakil that issue 6 in the case, viz.:

Whether the assessment was made without proper inquiry and without giving the plaintiff an opportunity to prove his contentions

could not be tried by the civil Court. Issue 5(a) raised the question of fact:

Whether the plaintiff had ceased to reside in British India, and whether he had no assessable income in British India.

2. The other issues were consequential. The lower appellate Court accordingly remanded the suit for trial of issue 5(a) and for findings on the other issues in the light of the finding that may be come to on issue 5(a). Against that order of

remand, this appeal has been preferred by the Secretary of State. In view of the arguments urged before us, it is necessary to refer to a few facts appearing from the documents put in evidence as bearing on the preliminary issue. The plaintiff was at one time admittedly a resident of Palavangudi in the Chettinad (Ramnad District), but his case was that from 1926 he had been permanently residing at Pondicherry in French Territory and that after a partition in his family in 1928, he had no proprietary interests, business or assets anywhere in British India. In October 1929 the plaintiff's agent appeared before the Income Tax Officer and put forward this contention. For reasons recorded in Ex. 1, that officer declined to accept that plea. He was of opinion that the plaintiff's residence out of British India was only temporary, that his wife was living in Chettinad and that he had a right to a share in the family house in Chettinad after his father's death. An appeal against Ex. 1 proved infructuous; and as the plaintiff did not make any return in respect of his income or produce his accounts in spite of several adjournments, he was assessed u/s 23(4) of the Act on a sum of Rs. 8,100, being the amount disclosed by the accounts of the partnership to have been remitted to him (vide Ex. 2). For the next assessment, there was no appearance by or on behalf of the plaintiff before the Income Tax Officer. The steps taken to serve notices on the assessee are detailed in Ex. 3. On default of appearance in spite of these steps, the assessment had again to be made u/s 23(4). But as, in the meanwhile, the assessee had sent a notice of suit to the Commissioner of Income Tax on 26th November 1930, the Income Tax Officer referred in his order (Ex. 3) dated 4th March 1931 to the materials on which he came to the conclusion that the plaintiff must be regarded as residing in Palavangudi. In addition to the circumstances stated in Ex. 1, he referred to the fact that the plaintiff's wife was living in Palavangudi in a house which he believed was purchased by the plaintiff in her name and that from an affidavit filed by that wife it appeared that plaintiff celebrated his daughter's marriage in that house in the year Sukla (1929-80) and that the plaintiff occasionally used to come and stay with her in that house.

3. In the circumstances above stated, two contentions have been urged before us in support of the Government's appeal; (1) that the bar enacted by the first part of Section 67, Income Tax Act of 1922 is absolute and unqualified, and (2) that the legislature has left it to the Income Tax authorities to decide both questions of fact and of law, that appropriate remedies by way of appeal and reference (including a reference to the High Court on points of law) have been provided in the Act and that it could not therefore be the intention of the Legislature that civil Courts should in a separate suit be at liberty to examine the correctness of the conclusions arrived at by the Income Tax authorities. Before dealing with the decisions cited before us, it is necessary to emphasize the fact that, in some of them, the question of exclusion of the civil Court's jurisdiction had to be dealt with merely on general principles and in the absence of a statutory prohibition, while in others the decision turned upon the scope of the prohibition enacted by statute. In the former class of cases, reliance has

naturally to be placed on the general scheme of the law creating or empowering the authority whose acts are sought to be challenged. The observations of the Judicial Committee in *Colonial Bank of Australia v. Willan*, (1874) 5 PC 417 are frequently referred to, as defining the limits of the civil Court's powers of intervention. But even in applying these observations, it seems to me unwarranted to assume that in all cases in which a prerogative writ can, according to those observations, issue from a superior Court, there must also exist a right of civil suit in the ordinary Courts of the land.

4. Whenever the right sought to be vindicated is not a creature of the statute itself but a common law right relating to the person or property of the subject, Courts start with the presumption that there must be a remedy in the ordinary Courts and insist on very clear and unmistakable indications of an intention to curtail or exclude the same; and in this connexion a distinction has been formulated between questions affecting the jurisdiction of the statutory authority and matters affecting the correctness of its decision. Even under the head of jurisdiction, a further refinement has been recognized, as indicated in the judgment of Lord Esher in *Queen v. Commissioners for Special Purposes of the Income Tax*, (1888) 21 QBD 313, according as the statute in question does or does not entrust to the statutory authority itself jurisdiction to determine whether or not the preliminary state of facts essential to give it jurisdiction to act under the statute exists. In *Reg. v. Bolton* (1841) 1 QB 66, which is referred to with approval in *Colonial Bank of Australia v. Willan*, (1874) 5 PC 417 and numerous later decisions, it was observed that the test of jurisdiction (for this purpose) was whether or not the authority in question had power to enter upon the enquiry, not whether its conclusions in the course of it were true or false." The Court explained the principle by adding that it might be shown that the tribunal had no authority to commence the enquiry inasmuch as the question brought before them was not one to which their jurisdiction extended; and this, although by misstatements they have made the proceedings on the face of them regular.

5. In cases where the relevant statute contains a specific provision limiting or excluding the jurisdiction of civil Courts, the determination of the ambit of the civil Court's jurisdiction must prima facie rest upon the language used in the excluding provision. Even here, when the language is not sufficiently definite or comprehensive, its interpretation is naturally influenced by the presumption against the intention to oust the jurisdiction of civil Courts, especially when personal liberty and rights of property are concerned. One well known class of cases where the statute law has advisedly enacted only a restricted exclusion of civil jurisdiction is that relating to taxation by Local or Municipal bodies. (cf. Section 354, *Madras District Municipalities Act of 1920* and Section 228, *Madras Local Boards Act of 1920*, which preclude the challenge in a civil Court of any assessment, etc., provided that the provisions of the Act have been in substance and effect complied with.) The result of such language is practically to assimilate this class of cases to those where the statute contains no express words of

exclusion of civil Courts" jurisdiction, (cf. *Navadwip Chandra Pal v. Purnanda Saha* (1898) 3 CWN 73 and *Chairman Giridih Municipality v. Sirish Chandra Muzumdar* (1908) 35 Cal 859, which turned on 8. 116, Bengal Municipal Act, which merely said that no objection shall be taken to any assessment or rating in any other manner than in this Act provided.)

6. Even where the words of exclusion in the statute are positive enough to exclude a writ of certiorari, the Judicial Committee made a reservation in *Colonial Bank of Australia v. Willan*, *Colonial Bank of Australia v. Willan*, (1874) 5 PC 417, in respect of manifest defect of jurisdiction or fraud of the party. Whatever may be the disinclination of the Legislature in England against enacting a total exclusion of the civil Courts" authority or of English Courts in inferring it, such exclusion is not unknown in this country. The decision in *Spooner v. Juddow* (1846) 4 MIA 353, is an instance in point. See also *Govindarajulu Naidu v. Secy. of State* AIR 1927 Mad 689. The point for decision in *Spooner v. Juddow* (1846) 4 MIA 353 related to the immunity of officers acting in excess of their powers in the administration of revenue law (similar to that provided for in the second part of Section 57, Income Tax Act) but their Lordships" observations, it was said, are equally apposite to the question arising under the first part of the section. The case is of special significance in view of the strong opinion expressed by Sir Erskine Perry (in the Supreme Court) in favour of the maintainability of the action. The learned Chief Justice referred to the interpretation placed by the Judicial Committee in *Calder v. Halket* (1837) 2 MIA 293 (PC) on 21 Geo. III Ch. 70, Section 24 and added: If jurisdiction does not exist in the Supreme Court to correct wrongs of this kind, it exists nowhere": see footnote on page 361 of 4 MIA in Mr. Sanjeeva Row's Edition of the Indian Reports. And yet their Lordships held against the jurisdiction of the Supreme Court, adding:

Whether the plaintiff might have redress before any other tribunal can only be material in a doubtful construction of the statutes.

7. If the jurisdiction of the Court is clearly taken away "our decision," they said, "could not be influenced by consideration that the plaintiff is left without remedy." In *Penugonda Venkataratnam and Another Vs. The Secretary of State for India in Council and Others*, the exclusion of jurisdiction by Section 110, Government of India Act, 1915, has been held to exclude even the jurisdiction to issue a writ of certiorari. Whether the High Court can issue a writ of certiorari on an Income Tax officer in the mofussil, is a question beset with even greater difficulty: see *In re Nataraja Ayyar*, (1913) 36 Mad 72 and *K.R.M.T.T. Thyagaraja Chettiar Vs. Collector of Madura*, ; but one cannot on that account recognize a right of suit in contravention of the declared policy of the legislature. In the interpretation and application of taxing statutes, the distinction between liability to assessment and the method or quantum of assessment has long been recognized in the Land Revenue Law of this country. After a review of the relevant statutory provisions, it was pointed out by a Full Bench in *Fahamidannissa Begum v. Secy. of State* (1887) 14 Cal 67 (FB), that the former

question had always been treated as and declared to be a matter for Courts of justice. The same distinction was recognized in Section 58, Madras Revenue Recovery Act, which excludes from the cognizance of civil Courts only questions as to "rate of land revenue or as to the amount of assessment." In *Fahamidannissa Begum v. Secy. of State* (1887) 14 Cal 67 (FB), the question was raised whether any and what departure had been made from this underlying principle by Act 9 of 1847, either by reason of its general scheme or by the specific provision in Section 9 which enacted that:

No suit or action in any Courts of justice shall lie against the Government or any of its officers on account of anything done in good faith in the exercise of the powers conferred by this Act.

8. The majority approached this question from the point of view that because of the declared policy of the Indian Legislature for at least 50 years, they should not adopt a construction involving a departure from it unless the Legislature had expressed such intention in clear and unmistakable language. As regards Section 9, they held that it only referred to suits for damages. This method of approach was approved by the Judicial Committee on appeal, *Secy. of State v. Fahamidannissa Begum* (1890) 17 Cal 590, and with reference to Section 9, their Lordships observed:

Full effect can be given to this section without holding that it deprives the owner of a permanently settled estate of that right of appeal which is given to him in order that he may have determined in a civil Court the justness of the demand of the Revenue authorities.

9. The language of Section 9 was in effect limited by their Lordships in view of the previous state of the law and they added (on p. 605):

If it had been intended to take away from the proprietors of estates the power by application to the Courts to obtain immediate redress in any case in which the revenue authorities shall violate or encroach on the rights secured to them by the Permanent Settlement, it would have been done in express terms and not by such enactments as are contained in the Act of 1847.

10. Pausing for a moment, to compare Section 9 of Act 9 of 1847 with Section 67, Income Tax Act, 1922, I may point out that the exclusion in the Income Tax Act cannot be explained away as relating only to the suits for damages, because the section consists of two parts, of which the latter alone may be said to correspond to Section 9 of Act 9 of 1847. The first part in terms provides that:

No suit shall be brought in any civil Court to set aside or modify any assessment made under this Act.

11. Subject to the controlling effect of the words "made under this Act," there can be little doubt that the exclusion of the jurisdiction of the civil Court is almost absolute. Can it be suggested that there is anything in the history of this branch of the law which, as in the case of land revenue law, would justify the Court in

limiting the scope of this exclusion? I am not aware of any such considerations. On the other hand, in the English system from which the Income Tax law has been borrowed, it was settled as early as in *Allen v. Sharp* (1848) 2 Ex 352, that legislative policy as well as considerations of expediency pointed to the propriety of treating the assessment by the assessing authorities as final and conclusive unless appealed from in the manner pointed out by the statute. It is true that in *Kensington Income Tax Commissioners v. Aramayo* (1916) 1 AC 215 [affirming the decision in *Rex v. Kensington Income Tax Commissioners* (1914) 3 KB 429] it was decided that "prohibition" will lie and is an appropriate remedy if the commissioners acted without jurisdiction. The case there was clearly within the principle of *Reg. v. Bolton* (1841) 1 QB 66; because, according to the then state of the law, only certain specified commissioners could assess a person to Income Tax in respect of profits derived from foreign possessions. Even on the fact found or assumed to exist, the Court held that the particular commissioner whose proceedings were sought to be restrained, had no jurisdiction to proceed with the assessment, as he admittedly was not one of those specified in the Act as competent to deal with such profits. The sense in which that decision must be understood was explained in *The King v. Bloomsbury Income Tax Commissioners* (1915) 3 KB 768. When it was argued that the commissioners had no jurisdiction to make or proceed upon the assessment because, according to the petitioner's contention, he was not chargeable to Income Tax, and it was further contended that the commissioners could not give themselves that jurisdiction to assess a person by determining in the first instance that he was chargeable when in fact he was not, Lord Reading, L.C.J. reviewed the history of the Income Tax law and after referring to *Queen v. Commissioners for Special Purposes of the Income Tax*, (1888) 21 QBD 313 held that:

The scheme of the legislature is to entrust the decision of the facts to a tribunal of persons specially selected for the locality ... reserving always to the individual the right to have the commissioner's decisions on points of law reviewed by the Courts. The obligation is placed for reasons of expediency upon the person assessed to appeal to the commissioners if he wishes to rid himself of an assessment which is, in his view, based upon wrong conclusions of fact.

12. The only qualification added is that the assessing authorities should have materials before them on which they could honestly come to a conclusion against the assessee:

Once that conclusion is reached, it follows that they had jurisdiction to decide all questions of fact.

13. Avery, J. observed that:

In such a case, it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts including the existence of the preliminary facts on which the further exercise of

their jurisdiction depends.

14. Both Avery, J. and Lush, J. make it clear that a writ of prohibition may issue if the assessing authority had never satisfied itself that a person was chargeable or had acted without any enquiry or if its belief was founded on an obvious and manifest mistake in law. Mr. Rajah Iyer referred to an observation of Bheerman, J. in *Rex. v. Swansea Income Tax Commissioners* (1925) 2 KB 250, to the effect that:

There may be cases in which prohibition may be obtained where the applicant shows that he is not liable to the jurisdiction of the commissioner at all.

15. Read in the light of other decisions and of the remarks of the other learned Judges who took part in that very case, this observation can only refer to cases like *Kensington Income Tax Commissioners v. Aramayo* (1916) 1 AC 215, where even on undisputed facts or facts assumed by the commissioner, they would have no jurisdiction. Whatever might be said of the Income Tax Act of 1886, there can be little doubt that the Indian Acts of 1918 and 1922 must, in view of their elaborate provisions and safeguards, be interpreted in the light of the principles above set forth as underlying the English Income Tax law. As I have already indicated, it may be open to doubt whether an ordinary civil action will lie in all cases in which and in all circumstances under which a writ of certiorari or prohibition may issue from a superior Court. But it certainly cannot be said that an assessment may be challenged by a civil suit even in circumstances in which a writ of certiorari or of prohibition will not be available. According to the facts which have been set out at the commencement of this judgment, the present case is one in which the assessing officer, did make an enquiry as to the facts relating to the plaintiff's residence in British India and there is no reason to think that he did not or could not honestly come to the conclusion that the plaintiff was a resident of British India: cf. *Rogers v. Inland Revenue*, (1881) 1 Tax Cas 225 and received in British India the income remitted from Saigon. In this view the plaintiff's suit must fail.

16. Mr. Rajah Iyer contended that according to the scheme of the Income Tax Act, it must not be held applicable to a nonresident assessee who disputed his liability to be assessed and that it did not entrust to the revenue authorities the right to decide the question of his liability and much less the right to decide it finally. I am not able to accept these contentions. In *The King v. Bloosmbury Income Tax Commissioners* (1915) 3 KB 768 already referred to, it was laid down, on the authority in *Allen v. Sharp* (1848) 2 Ex 352 that the procedure under the Act applied as much to a person who contended that he was not chargeable as to one who admitted that he was chargeable but complained of the manner or extent of assessment. The provisions of Sections 42 and 44-A of the Indian Act clearly contemplate assessment being imposed on income accruing to non-resident foreigners and there is no reason why the assessing authority should not have the power to decide a disputed question of residence or receipt in British India for the purpose of Clauses 1 and 4 of Section 4, if it could and

must decide disputed questions Under Sections 42 and 44-A. The notice u/s 22, Clause (2) of the Act must be issued to all persons who, in the opinion of the Income Tax Officer, are in receipt of an income liable to tax and if a person thus served disputes his liability, I think it is his duty to put forth his objection before the assessing authorities. Section 30 makes it clear that one of the grounds of appeal contemplated by the Act is the assessee's denial of liability to be assessed under the Act. I see no reason to limit the scope of the denial there contemplated to the exceptions enumerated in Clause (3), Section 4. That a denial of liability on the ground of non-residence may be raised in the course of assessment proceedings is shown by *Commissioners of Inland Revenue v. Lysaght* (1928) AC 234 on appeal from (1927) 2 KB 55: see also *Rex. v. Marylebone Income tax Commissioners* (1929) 13 Tax Cas 746; *Commissioners of Inland Revenue v. Lysaght* (1928) AC 234 also shows that in certain circumstances and subject to certain limitations the question of residence may be a question of law fit to be referred to the High Court for its opinion: see also *Levene v. Commissioners of Inland Revenue* (1928) AC 217. Mr. Rajah Iyer also contended that as the plaintiff did not appear before the Income Tax Officer he could not have appealed to the Assistant Commissioner u/s 30; but I fail to see how that circumstance can affect the construction of the Act as to the scope of the matters to be decided by the assessing authorities.

17. It is not necessary for the purposes of this case to decide whether the language of Section 67 of the Act of 1922 is clear or comprehensive enough to exclude a suit even in cases like these instanced by *Avery, J. and Lush, J. in The King v. Bloomsbury Income Tax Commissioners* (1915) 3 KB 768 as fit cases for the Court's interference by writs of certiorari or prohibition. The answer to that question will in some measure depend upon the construction to be placed on the expression "made under this Act" occurring in the section. As observed by *Muthuswami Ayyar, J., in Venkata v. Chengadu* (1889) 12 Mad 168 (with reference to similar language in Section 59, Madras Revenue Recovery Act):

The section presupposes that certain proceedings were professedly taken under the Act and that there might be a valid claim to redress on the ground that they were not in accordance with the provisions of the Act.

18. The question (which was left open in that case) is whether the proceedings contemplated are those which are vitiated by mere errors of procedure or include those taken without jurisdiction. Later decisions relating to sales for arrears of public charges have proceeded not so much on the construction of this or like expressions but on the broad ground that sales not warranted by the statute are void and do not therefore require to be set aside within the shorter period of limitation: cf. *Balakrishnan Das v. Simpson* (1898) 25 Cal 833; *Marukkolandayammal Vs. The Secretary of State for India in Council and Another*, . In *Fischer v. Twigg* (1898) 21 Mad 367, a case under the District Municipalities Act it was observed that:

An imposition which is expressly prohibited by the Act cannot be deemed to be

made under the provisions of the Act.

19. The principle thus stated may perhaps be unexceptionable but its application will not always be easy. Take for instance, the first exception provided for in Clause (3), Section 4, Income Tax Act of 1922, i.e., that in the case of property held in part in trust for religious or charitable purposes, the income applied thereto shall not be taxed. Suppose the Income Tax authorities on the materials before them held that only a certain amount has been so applied but the assessee contends that a larger portion of the income has been applied for the purposes of the trust, could it have been intended that such a dispute might be agitated in a regular suit? Turning for a moment to the language of Section 67, Income Tax Act of 1922, it is obvious that the second part of the section, relating to the immunity of Government and its officers must cover not merely acts authorized by the statute but also acts done without jurisdiction but in the bona fide belief that they were authorized (cf. the fuller language employed in Section 1 of Act 18 of 1850). Mr. Rajah Iyer suggests that this wider import is to be derived from the expression "intended to be done" in that part of the section, but it seems possible that the word "intended" was used only to signify "futurity" so as to preclude suits for injunction in respect of proceedings intended to be taken by the Income Tax authorities. Amongst the reported cases under the Income Tax Acts brought to our notice, the only instance in which the assessee's suit succeeded is the decision of the Bombay High Court in *Haji Rehemtulla Haji Tarmahomed Vs. The Secretary of State for India*, . The decision turned on Section 39 of Act 2 of 1886 which was substantially in the same terms as the first part of Section 67 of the Act of 1922 and the learned Judges categorically laid down that:

If the assessment is clearly ultra vires we do not think the provisions of that Act will apply.

20. There was no further discussion of the question of jurisdiction and the rest of the judgment deals only with the propriety of the assessment. The ground of denial of liability in that case no doubt was that the profits did not arise or accrue in British India but the rival contentions would seem to have turned on a point of law, the facts not being in dispute; and the learned Judges held that on the facts stated "the profits accrued in the Baroda State." The case is accordingly of no help to the present plaintiff, though it is an authority against a total denial of a right of suit. The Act of 1886 contained no provisions corresponding to the second part of Section 67 of the present Act which I have referred to above as throwing some light on the construction of the first part; nor did it contain the safeguards enacted in the present Act, by way of a right of appeal u/s 30, reference to a Board of Referees u/s 33-A and reference to the High Court with a right of appeal to the Privy Council Under Sections 66 and 66-A. I am not prepared to assume that the existence of those provisions indicating an elaborate special procedure would have made no difference in the opinion of those learned Judges. In *In re Ramjidas Mahalisam* (1935) 62 Cal 1011, the discussion related

to writ of certiorari and prohibition. The decision emphasizes the significance of the fact that in the Act itself:

There is machinery by which the assesses may bring the matter before the Court and he can no longer contend that he has no specific or adequate remedy.

21. It is true that on p. 1093 the learned Judge observes that it is not for the Income Tax Officer to decide whether the state of facts contemplated by Section 34 exists and if he re-opens the assessment without their existence he is acting without jurisdiction." But the context suggests that the learned Judge made that observation with reference to the nature of the special provisions in Section 34; otherwise, he would not have left unanswered the argument based on *Queen v. Commissioners for Special Purposes of the Income Tax* (1888) 21 QBD 313 and *King v. General Commissioners for Taxes for the District of Clerkenwell* (1901) 2 KB 879. The remark that English decisions are not authoritative on the construction of the Income Tax Act was directed to the argument that the assessing officer's functions are only "administrative" and not "judicial."

22. In *Secretary of State v. A.H. Forbes* AIR 1922 Pat 361, the actual decision was in favour of the Government, but the learned Judge affirmed the principle that if a statutory authority purports to exercise its powers on what is not according to law (the subject matter of those powers) the Court will interfere "because the authority is not acting under the statute and is not protected thereby." The reference to *Chairman Giridih Municipality v. Sirish Chandra Muzumdar* (1908) 35 Cal 859 and the question made from that judgment suggest that the learned Judge did not in the circumstances find it necessary to keep apart the two classes of cases in one of which the exclusion of the civil Court's jurisdiction is enacted in much more restricted terms than in the other. In *B. Raja Rajeswara Sethupathi Avergal alias B. Muthu Ramalinga Sethupathi Avergal, Rajah of Ramnad Vs. The Right Honourable The Secretary of State for India in Council*, , it was no doubt stated that:

Where a certain income is outside the scope of the Act, such as agricultural income or income not earned in or brought into British India, any assessment in respect of such income would be outside the scope of the Act and a civil suit to recover it would not be barred;

but the observation was obiter and it became unnecessary to pursue the matter as the assessee's suit failed on another ground. Further, no reference was made to the possible distinction between cases in which the item of income was even on the admitted facts outside the scope of the Act and these in which the assessing authorities had to decide on evidence whether it was within the Act or not. *Dayaram Ramadas v. Secretary of State* AIR 1925 Sind 130 likewise contains only dictum that if the Income Tax authorities had assessed anything but "income" or had levied assessment on the classes of income exempted by the Act, they would have overstepped the limits of their jurisdiction and the assessment would not have been under the Act. *Dr. R.N. Singha v. Secretary of*

State AIR 1928 Rang 70 adds very little beyond referring to the distinction between "erroneous" assessment and "ultra vires" assessment.

23. In *Forbes Vs. Secretary of State For India*, there appears a concession by counsel in the course of the argument (see p. 153) that if the Collector assesses anything but income, he acts beyond his jurisdiction; but on the next page he is reported to have maintained that it is for the Collector to determine who is chargeable and that the civil Courts have no jurisdiction to determine that question. The judgment reflects this line of argument; it is, however, noteworthy that when counsel was referred to *Kameswar Pershad v. The Chairman Bhabur Municipality* (1900) 27 Cal 849, he pointed out what I have already indicated that the provisions of the Income Tax Act are different from those of the Municipal Act. The learned Government Pleader claimed that *Forbes Vs. Secretary of State For India*, was a direct authority in his favour even for the purposes of the present case, because, he said, in both cases the question must be held to relate to the person chargeable; but this ignores the fact that in the *Calcutta* case the income was admittedly assessable whereas in the present case the income will not be within the Act at all if the plaintiff's contention as to his residence is true. The learned Judges, however, recognized the principle that in respect of matters which the Act has left to be determined by the assessing authorities, their decision cannot be questioned by a separate suit. As I have held that in the present case also the assessing authority had power to determine the question of the plaintiff's residence in British India and the consequent receipt of the profits here, the plaintiff's suit must fail even according to the principle of the *Calcutta* decision. The appeal is allowed and the plaintiff's suit is dismissed with costs throughout.

Stodart, J.

24. This appeal arises out of a suit filed by the respondent *Meyyappa Chetty* in the Court of the District Munsif, *Devakottai*. The plaintiff is a merchant having a business in *Saigon*. He was assessed to Income Tax in British India on profits of this business brought into British India in the years 1929-1930 and 1930-1931. Such profits are chargeable only if they are received by or brought into British India by a resident in British India: see Section 4, Sub-section 2 of the Act. Plaintiff by his local agent contended before the Income Tax Officer that he did not reside in British India but the Income Tax Officer found against him and required him u/s 22 to submit a return of his income. He did not do this and was assessed u/s 23, Sub-section 4, and u/s 30 became debarred from the remedies provided by the Act, namely from the right of appeal to the Assistant Commissioner and second appeal to the Commissioner; and from the right conferred by Section 66 of having a reference made to the High Court. Incidentally it may be observed that plaintiff contended also that he had no property in British India, but he must have had some property which could be proceeded against for the realization of the tax; for he paid the tax.

25. Plaintiff then filed this suit for a declaration that he was not liable to be

assessed and to recover the tax paid by him. He contended that he was not a resident of British India, but of Pondicherry, in French India. He contended firstly that the Income Tax Officer had not conducted a proper inquiry into the question of his residence and that he had had no proper opportunity of stating his case on this point and secondly, that the Income Tax Officer was wrong in holding that he was a resident of British India. The first of these grounds is now given up. There is no doubt that the Income Tax Officer did hold an inquiry as to the question of plaintiff's residence and decided that question to the best of his ability on the materials available. The learned District Munsif held that plaintiff's suit was not maintainable being barred by Section 67 of the Act, the first part of which is:

No suit shall be brought in any civil Court to get aside or modify any assessment made under this Act.

26. Plaintiff appealed to the learned Subordinate Judge of Devakottai who held on the contrary that if it was true that the plaintiff was not a resident of British India then the Income Tax Officer's decision on that point was wrong and the assessment based on that decision was not made under the Act" and so a suit to set aside that assessment lay; and in the result remanded the suit for trial of the issue:

Whether the plaintiff had ceased to reside in British India and whether he had no assessable income in British India.

27. Against that order of remand this appeal is preferred by the Secretary of State. The learned Government Pleader for the appellant contends that the question of respondent's residence was one which the Income Tax Officer had jurisdiction to decide; that his decision on the point was thus made under the Act; and that it cannot be challenged by a suit in the ordinary civil Courts but only in the manner provided by the Act. Learned Counsel for the respondent argues on the other hand that in deciding the point wrongly, the Income Tax Officer wrongly assumed jurisdiction and the assessment which followed on that decision was without jurisdiction. My finding is that the appellant's case is supported by ample authority and that the appeal must succeed.

28. The respondent does not dispute the general principle that when the legislature sets up authorities and tribunals to deal with a certain limited subject matter then a person aggrieved by an act done or decision made by such tribunal must have recourse to the remedies provided by the statute unless the act or decision complained of is done or made without jurisdiction or is in excess of jurisdiction. In the latter case he has recourse to the civil Courts; his remedy in India being by way of suit, in England by one of the prerogative writs such as prohibition or certiorari: see Robertson's Civil Proceedings by and against the Crown, and Halsbury's Laws of England under the title Crown Practice, Chs. II to V and the judgments of Bankes, L.J. and Atkin, L.J., in *Rex v. Electricity Commissioners* (1924) 1 KB 171 and more particularly the general observations of Atkin, L.J. at p. 204:

Wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to. act judicially act in excess of their authority they are subject to the controlling jurisdiction of the King's Bench exercised in those writs: p. 205.

29. The point which we have to decide in this appeal is whether the decision which the Income Tax Officer made as to the residence of the respondent was made in excess of his authority. A question of that kind must obviously arise in all cases in which under the Income Tax Act the taxing officer has to decide whether any particular item of income is or is not chargeable. I may observe also that the exempting clause in the Income Tax Act, namely Section 67 and similar clauses in other Acts which protect acts done and decisions made by statutory authority, do nothing more than enunciate the general principle. For instance Section 67 protects assessment made "under the Act." It does not protect assessments made in excess of jurisdiction. This general principle is well established in decisions of Indian Courts. See the judgment of Mukerji, J., in *Kensington Income Tax Commissioners v. Aramayo*, (1916) 1 AC 215, where the question for decision was the validity of a tax levied on the property:

A corporation which is invested with authority to assess taxes, is really invested with the quasi judicial power, and though its action when taken in conformity with the provisions of the law which created the authority, may not be liable to challenge in the civil Courts, it does not enjoy a similar immunity when that action can be challenged on the ground that it has been taken either in excess of or in contravention of the powers conferred upon by it by the statutes (p. 865).

30. The Bengal Municipal Act which was then under consideration contained an excluding clause (Section 116) to the effect that no objection could be taken to any assessment or rate in any other manner than in the Act provided, and this clause was strongly relied on by the Municipality on whose behalf it was contended that a regular suit for cancellation of the assessment was not contemplated by the legislature. On this point Mukerji, J. said:

In my opinion this contention is not well founded upon principle, and is not supported by any authority. The effect of . Section 116 was considered in the cases reported at *Navadwip Chandra Pal v. Purnanda Saha* (1898) 3 CWN 73 and *Kameswar Pershad v. The Chairman Bhabur Municipality* (1900) 27 Cal 849. In these oases it was pointed out that Section 116 does not take away the jurisdiction of the civil Court in a case in which it is alleged and established that the assessment is open to objection on the ground that it is ultra vires; in other words it is only when the action of the Municipality has been exercised in conformity with the powers conferred upon it by the Act that the civil Court has no power to interfere.

31. Again, in a case (*Standard Life Assurance Co. v. Municipal Council, Cocanada* (1901) 24 Mad 205) in which the Standard Life Assurance Company sued the Municipal Council, Cocanada to recover a sum levied on it as profession tax it

was held, (1) that the suit lay because the Council had no authority to tax an Insurance Company, life insurance not being one of the businesses or trades in respect of which a tax might be levied and (2) that the suit was not barred by the excluding clauses, namely, Section 101, District Municipalities Act, 1884:

The assessment or demand of any tax, when no appeal is made as hereinafter provided, and the adjudication of an appeal by the Municipal Council shall be final;

and Section 162(2):

No suit should be brought in any Court to recover any sum of money collected under the authority of this Act... provided that the provisions of this Act have been in substance and effect complied with.

Their Lordships say:

The question really is whether when a company... which is not taxable under the Act, is nevertheless taxed, it can be said that the provisions of the Act have been in substance and effect complied with. In other words the immunity conferred on statutory authorities by the provision which shuts out the jurisdiction of the civil Court does not extend to cases where their decisions are ultra vires.

32. The respondent here, as I have said, does not quarrel with the general proposition of law that the statutory authority is immune from suits so long as it acts in conformity with the statute and does not exceed its powers. What then is his position? It is this. Before proceeding to make the assessment the Income Tax Officer had to decide whether or not the assessee resided in British India. Having wrongly decided this in the affirmative he wrongly assumed jurisdiction. Therefore the assessment was made without jurisdiction and is not protected by the general principle and is not protected by Section 67 either, since it was not made "under the Act." The question for decision therefore in this appeal is simply this: Had the Income Tax Officer jurisdiction to decide the point of the respondent's residence? Then, if he did so after proper enquiry--for absence of proper enquiry has always been held to impair jurisdiction--his action in making the assessment in pursuance of that decision was not wrong. I must observe again that though the respondent raised the plea of absence of proper enquiry in the trial Court, he abandoned it on appeal. The whole case of the respondent therefore is that before proceeding to make the assessment, the Income Tax Officer had to find that the respondent was a resident of British India and having wrongly found that as a fact, he wrongly assumed jurisdiction to assess this particular item of income and thus acted without jurisdiction in assessing it.

33. Another point which arose in the course of the argument is this: Being a subject of a foreign State respondent claims to have been within his rights in ignoring the requisitions of the Income Tax officer that he should make a return of his income. Section 30 of the Act debars him from the remedies provided by the Act. Is he therefore to have no redress in the Courts of British India? As will

be seen hereafter there is ample authority for the position that the absence of any other remedy is not to be taken into consideration in deciding the question whether the decisions of a statutory tribunal are or are not final. That a statutory tribunal or authority which has to arrive at a decision as to the existence or non-existence of certain facts before proceeding to take further action under the statute is acting within the jurisdiction in making that decision and is immune from civil proceedings to quash that decision except such as are prescribed by the statute, is established beyond all controversy. In *Queen v. Commissioners for Special Purposes of the Income Tax*, (1888) 21 QBD 313, the question arose on the interpretation of the words "at the end of the year." The Commissioners for General Purposes were empowered to grant certificate for refund of Income Tax overpaid, on application made "at the end of the year." Having done so in certain cases in which the applications were made long after the end of the year, the Commissioner for Special Purposes refused to honour the certificate on the ground that they were granted without jurisdiction. It was held that the Commissioners for General Purposes had jurisdiction to decide whether in the circumstances the applications were made in time. Lord Esher (Master of the Rolls) dealing with this point observed:

When a tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence what they do may be questioned. But there is another state of things ... The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more.... It is an erroneous application of the formula, to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts, because the legislature gave them jurisdiction to determine all the facts, including the preliminary facts on which the further exercise of their jurisdiction depends.

34. In a recent case *The King v. Bloosmbury Income Tax Commissioners* (1915) 3 KB 768, where the question at issue was the legality of a surcharge made by the Commissioner on the report of a surveyor of taxes, it was contended on behalf of the applicant that the Commissioners could not give themselves jurisdiction by wrongly deciding that the applicant was chargeable. Lord Esher's finding in the case just cited was emphatically affirmed. Lord Beading, C.J. said:

In my judgment this dictum states accurately the principle applicable to such cases;

and again:

In my view an examination of the Income Tax Acts shows that the scheme of the legislature is to entrust the decision of the facts to a tribunal of persons specially selected for the locality, and who are often in a better position than the Courts to determine the questions of fact . . . The exigencies of the State require that there should be a tribunal to deal . . . with all such questions and to decide them finally . . . The obligation is placed for reasons of expediency, upon the person assessed to appeal to the Commissioners if he wishes to rid himself of an assessment which is in his view based on wrong conclusions of fact, and this obligation rests equally upon a person who contends that he is not chargeable as upon a person who admits that he is chargeable but not to the extent of the assessment made upon him.

35. *King v. General Commissioners for Taxes for the District of Clerkenwell* (1901) 2 KB 879 was an application to prohibit the Commissioners from assessing certain profits to Income Tax on the ground that by an erroneous decision on the facts they were seeking to give themselves a jurisdiction which they did not possess. It was held that they were merely deciding facts going to the quantum of taxable liability and that the proper remedy was by appeal upon a case stated; that is to say, the remedy provided by the statute. The Commissioners, having jurisdiction under the Income Tax Act (1842), to assess a certain company to Income Tax in respect of profits of a business carried on either wholly, or in part only, in Great Britain, they had for the purposes of that assessment jurisdiction to decide all questions of fact necessary for ascertaining the amount of these profits and therefore prohibition would not lie. What the Commissioners had decided was that the profits of the Eastman Kodak Company carrying on business in the United States were technically the profits of the Kodak Company which carried on business in London. The Court refused to enter into the merits of this decision. *Colonial Bank of Australia v. Willan*, (1874) 5 PC 417 is an interesting and authoritative case which is relevant here on two grounds. The appeal was brought from a judgment of the Supreme Court of Victoria which quashed an order made by a Court of Mines established under a statute called the Mining Statute. The order of the Court of Mines was that a certain company should be wound up forthwith under the provisions of the Mining Companies Limited Liability Act; and was made at the instance of the Colonial Bank on the ground that the company owed it a large amount of money. The Supreme Court having been moved by writ of certiorari rescinded the order on the ground that it was made without jurisdiction as the company was not indebted to the bank, which again depended on the question whether the debt was incurred with the authority of duly constituted officers of the company. The Judicial Committee held that the question of the existence of the debt was a question which the Judge of the Court of Mines was competent, in fact, bound to decide; that the Supreme Court could only come to the opposite conclusion upon a re-trial of the question (which of course was inadmissible); and that the winding up order could not therefore be quashed on the ground that it was made without jurisdiction (see p. 443):

An objection that the Judge has erroneously found a fact, which though essential to the validity of his order, he was competent to try, assumes that having general jurisdiction over the subject matter, he properly entered upon the inquiry but miscarried in the course of it. The Supreme Court cannot quash an adjudication upon such an objection without assuming the functions of a Court of appeal, and the power to retry a question which the Judge was competent to decide.

36. The second point on which this decision is relevant to the present case arises from the fact that the Mining Statute contained a clause providing that no proceedings under the Act should be removed or re-moveable to the Supreme Court save as provided in the Act. The Judicial Committee held that this privative clause did not operate to deprive the Supreme Court absolutely of its power to issue a writ of certiorari, but merely controlled and limited its action on such writ; and expressed its opinion that in such cases the Court would interfere to quash an order only upon the ground of manifest defect of jurisdiction in the tribunal making it, or of manifest fraud in the party procuring it: see Halsbury.Vol. 9, p. 862, para. 1458 in the title Crown Practice:

Although certiorari is taken away (by the statute) it may be granted when the inferior Court has acted without or in excess of jurisdiction for in such a case the Court has not brought itself within the terms of the Statute taking away certiorari.

37. This is the exact position contended for by the respondent here. Section 67 does not bar a suit to set aside an assessment made without jurisdiction for the reason that such an assessment is not made under the Act. The second main contention of the respondent is that being a foreign national he was entitled to ignore the requisitions made by the Income Tax Officer calling upon him to make a return of his income u/s 30 of the Act. Having thus become debarred from the remedies provided by the Act by way of appeal and second appeal, etc., he is left without remedy unless he can file a suit against the Government to establish that he is not assessable to Income Tax. The fact that a person has no other remedy has however been held by the highest authority to be no answer to the objection that no action lies in the ordinary civil Courts to challenge the act of a statutory authority so long as the latter acted within his authority. In *Spooner v. Juddow* (1846) 4 MIA 353 which was an appeal by a Collector of Revenue against a decision of the Supreme Court of Bombay mulcting him in damages in an action for trespass, it was held by the Judicial Committee that the action was barred by 21 Geo. III, Ch. 70, Section 8:

That the said Supreme Court shall not have or exercise any jurisdiction in any matter concerning the revenue, etc.

38. It was also held, on the argument that the respondent had no other remedy as follows:

Whether the plaintiff might have redress before any other tribunal can only be material in a doubtful construction of the Statutes and Charters establishing the Court in which the action was brought. If by these Statutes and Charters its

jurisdiction is clearly taken away, our decision could not be influenced by the consideration that the plaintiff is left without remedy.

39. There is always a remedy of course for acts done or decisions made under colour of any particular statute when these acts are done or decisions are made without jurisdiction or in excess of jurisdiction. Mukerji, J. in *Chairman Giridih Municipality v. Sirish Chandra Muzumdar* (1908) 35 Cal 859, cited above, indicates the particulars in which the jurisdiction of the quasi judicial tribunal may be defective or when it may be exercised in excess: see p. 866 of 35 Cal. There may be a manifest defect of jurisdiction in the tribunal that made order such as in the case reported in *Kensington Income Tax Commissioners v. Aramayo*, (1916) 1 AC 215 where an Income Tax assessee was assessed by the Commissioners for Kensington when on the facts stated he should have been assessed by the Commissioners for the City of London. There may be manifest fraud in the party obtaining the order. There may be something defective in the character or constitution of the Court. Again the subject matter of the enquiry on which the decision was made may be outside the scope of the Act as in *Standard Life Assurance Co. v. Municipal Council, Cocanada* (1901) 24 Mad 205, cited above. There may be the absence of some preliminary proceeding which was necessary to give jurisdiction to the tribunal. For example take these cases where revision of property tax in a Municipality is challenged on the ground that the prescribed formalities of publication, etc. were not observed. The cases cited by the learned counsel for the respondent are examples of these principles and are no exceptions to the general rule. In *Haji Rehemtulla Haji Tarmahomed Vs. The Secretary of State for India*, the assessee had been assessed on profits which accrued in the Native State of Baroda and were received by him in the Native State of Gondal. Such profits are clearly outside the scope of the present Income Tax Act as they were outside the scope of the then existing Act (2 of 1886). On the facts of the case the Income Tax Officer had no jurisdiction; and his fallacious reasoning that the profits were taxable because they accrued on the sale of grain which was grown in British India and exported into Baroda was rejected: See also the observations of the learned Judges in *B. Raja Rajeswara Sethupathi Avergal alias B. Muthu Ramalinga Sethupathi Avergal, Rajah of Ramnad Vs. The Right Honourable The Secretary of State for India in Council*, :

If the tax was levied under the Act no doubt a suit would be barred, but if the assessment was made in respect of an item of income which is not assessable under the Act, a civil suit would lie to recover it inasmuch as the officer making the assessment had no jurisdiction to make it. In cases in which the Income Tax Officer has to decide whether a certain item of income is assessable or not, his decision cannot be said to be ultra vires even if it is illegal. But where a Certain income is outside the scope of the Act, such as agricultural income or income not earned in or brought into British India, any assessment made in respect of such income would be outside the scope of the Act, and a civil suit to recover it would not be barred by reason of Section 52.

40. For the converse proposition that no suit will lie when the Income Tax Officer is acting within his powers in making the assessment, see *Forbes Vs. Secretary of State For India*, . That was a case where the plaintiff Forbes contended that he was not liable to be assessed on profits received by him as an executor. Jenkins, C.J. said:

The Collector has come to the conclusion that the subject matter with which he was dealing was income, as admittedly it was, and so was subject to tax. He further determined that the plaintiff being the person to whom the income accrued was the person chargeable. In so determining he was exercising a jurisdiction that was clearly vested in him by the Act, and I cannot see how it can be said that he purported to exercise a jurisdiction which he did not possess and so did not make an assessment under the Act. This is income which is liable to be taxed within the meaning of the Act. The Collector has determined that the plaintiff is a person chargeable and in so doing has acted within the limit of his jurisdiction. That being so it appears to be a case where, according to Section 39 (which is in terms the same as Section 67 of the present Act) it is right to say that the suit does not lie.

41. I agree therefore with my learned brother in holding that respondent's suit was not maintainable. This appeal is allowed with costs. The order of the lower appellate Court is set aside and the decree of the trial Court restored.