
(1963) 08 KL CK 0036
In the High Court Of Kerala
Case No : Writ Appeal No. 5 of 1962

The Commissioner, Quilon Municipality, Quilon	APPELLANT
Vs	
Harrisons and Crosfields Ltd., Quilon	RESPONDENT

Date of Decision : 26-08-1963

Acts Referred:

Constitution of India, 1950 — Article 276(2)
Taxation and Finance Rules — Rule 18, 18(2)
Travancore District Municipalities Act, 1116 — Section 325

Citation : AIR 1964 Ker 25

Hon'ble Judges : M.S. Menon, C.J;S. Velu Pillai, J;M. Madhavan Nair, J

Bench : Full Bench

Advocate : V.K.K. Menon, C.s. Padmanabha Iyer and M. Ramachandran, for the Appellant; P.K. Kurian, K. Sukumaran and K.A. Nayar, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, C.J.—This is an appeal from the decision of Vai-dialingam, "J., in O. P. No. 981 of 1960. That petition which has been allowed was by the respondent before us, Messrs. Harrisons" and Crossfield Limited, Quilon. The appellant -- the 1st respondent in O. P. No. 981 of 1960 -- is the Commissioner of the Quilon Municipality.

2. The controversy relates to the assessment of the respondent to profession tax for the two half years of the financial year 1958-59. The assessment was on the basis of the proviso to Rule 18 (2) - of the Taxation Rules in Schedule II to the Travancore District Municipalities Act, 1116 (M. E.}. The assessment order is Ext. B and the resolution of the Municipal Council dismissing the respondent's appeal and confirming the assessment is Ext. F dated the 15th March, 1960.

3. Rule 18 (1) of the Taxation Rules reads as follows :

"Where a company or person transacts business in any half-year exclusively in the area of a single municipality, the income of such company or person from the

transaction of such business shall, for the purpose of levying profession tax under this Act during the half-year, be deemed to be --

(a) where Income Tax is assessed on such company or person under the Travancore Incometax Act for the year, comprising the half-year, one-half of the amount at which the profits and gains of such business are computed u/s 8 of the Travancore Income Tax Act for the purpose of assessing the Income Tax; and

(b) where the amount of the said profits and gains is not ascertainable or where such company or person is not assessed to Income Tax, such percentage as our Government may prescribe, of the turnover of the business transacted in the area of the municipality during the half-year or where this is also unascertainable during the corresponding half-year of the previous year."";

and Rule 18 (2) :

"Where a company or person transacts business partly in the area of a municipality and partly outside such area, the income of such company or person from the transaction of business in the area of the municipality shall, for the purpose of levying profession tax under this Act, be deemed to be the percentage prescribed under Clause (b) of Sub-rule (1) of the turnover of the business transacted. In such area during the half year or the corresponding half-year of the previous year, as the case may be.

Provided that in the case of a company or person assessable to Income Tax, the total profits earned by the company or person as disclosed by the Income Tax assessment for the whole State for the year comprising the half-year for which the profession tax is to be levied, shall be divided in the proportion of the turnover of the business of the company or person in the Municipality and outside for purposes: of assessment to profession tax.""

The proviso to Rule 18 (2) was not originally part of that rule. It was added by a notification dated the 26th August 1947 in exercise of the powers conferred by Section 325 of the Travancore District Municipalities Act, 1116 (M. E.).

4. The Finance Act of 1950 replaced the: Travancore Income Tax Act, 1121 (M.E.). by the Indian Income Tax Act, 1922. The workability of the proviso after the disappearance of the Travancore State by its merger in the Union of India and after the replacement of the Travancore Income Tax Act, 1121 (M.E.), by the Indian Income Tax Act, 1922, came up for consideration before a Division Bench of the Travancore-Cochin High Court in *Harrisons and Crossfield Limited v. Commissioner, Quilon Municipality* ILR (1955) TC 1003 : AIR 1956 Trav. Co. 174). The Court came to the conclusion that the proviso was no longer workable and that it has become obsolete.

5. A notification amending Rule 18(1)(a) and the proviso to Rule 18 (2) followed on the 15th February 1956. It was issued in exercise of the powers conferred by Section 325 of the Travancore; District Municipalities Act, 1116 (M.E.). The amendments effected by the notification read as follows :

"(1) in Clause (a) of Sub-rule (1) of Rule 18,

(a) for the words "Travancore Income Tax Act" wherever they occur, the words and figures "Indian Income Tax Act, 1922" shall be substituted.

(b) for the word and figure "Section 8", the word and figures "Section 10" shall, be substituted.

2. In the proviso to Sub-rule (2) of Rule 18, for the words "whole State". the words "whole of the Indian Union." shall be substituted." The concluding portion of the notification said : "These amendments shall be deemed to have come into force from 1-4-1950."

6. The validity of the notification was challenged before the Travancore-Cochin High Court in O. P. Nos. 196 to 202 of 1955. Varadaraja Iyengar, J., said :

"I hold that the retrospective operation of the amendments as attempted by the Notification has failed to effectuate."; and :

"I should not omit to mention the further argument addressed by learned Counsel for the petitioners that Article 276 of the Constitution would discountenance the Notification altogether, let alone its retrospectivity. That is to say the Notification was calculated to impose a tax beyond the limit and by an authority not competent either. But it is unnecessary to canvass this larger question in the light of the conclusion I have already arrived at."

7. The Kerala Legislature then came into the picture and enacted the Profession Tax (Validation and Reassessment) Act, 1958. Section 2 of that Act -- Act 14 of 1958 -- reads as follows :

"Notwithstanding any judgment, decree or order of any court, the amendments to the Taxation and Finance Rules contained in Schedule II to the Travancore District Municipalities Act, 1116 (XXIII of 1116), made by notification No. LS. 11-13975/55/DD dated 15th February, 1956, of the Government of the former State of Travancore-Cochin, shall be deemed to have come into force with effect from the 1st day of April, 1950, and the validity of the levy or collection of profession tax made under the said Act and Rules shall not be called in question on the ground that the amendments made by the notification aforesaid cannot have any retrospective operation, and any profession tax so levied but not collected may be collected as if the said amendment had been validly made with effect from the 1st day of April, 1950."

8. The question that we are called upon to decide in this case--can the notification dated the 15th February 1956 and Act 14 of 1958 be sustained in view of Article 276(2) of the Constitution -- arose for consideration in *Harrisons and Crossfield Ltd., Quilon and Others Vs. Commissioner, Quilon Municipality and Others*, . In that case a Division Bench of this Court formulated the question for decision as follows.

"We are now in a position to formulate the legal issue, which is common to all the

petitions now before us. Very shortly put, it is whether the permission under the Constitution to continue levy of the profession tax on incomes, includes the authority to enact fresh rules, that empower profession tax being charged beyond the limits imposed by Article 276(2) ? it is obvious that should the decision on the issue be in the negative, neither the notification of February 15, 1956 nor Act No. XIV of 1958 would be within the competence of the enacting authority, and the writ petitions would succeed"

and answered the question in favour of the as-sessee and against the Municipality.

9.) Article 276(2) of the Constitution reads as follows :

"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 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."

Article 367 of the Constitution makes the General Clauses Act, 1897, applicable to the interpretation of the Constitution and u/s 3 (42) of that Act the word "person" includes any company or association or body of individuals whether incorporated or not.

10. Article 276 is modelled on Section 142A of the Government of India Act, 1935, which was introduced by the Indian and Burma (Miscellaneous Amendment) Act, 1940. Sub-section (2) of that section reads as follows :

"The total amount payable in respect of any one person to the Province or to any one municipality, district board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the thirty-first day of March nineteen hundred and thirty-nine, exceed fifty rupees per annum :

Provided that, if in the financial year ending with that date there was in force in the case of any Province or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate of which exceeded fifty rupees per annum, the preceding provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Federal Legislature, have effect in relation to that Province, Municipality, board or authority as if for the reference to fifty rupees per annum there were

substituted a reference to that rate or maximum rate, or. such lower rate, if any (being a rate greater than fifty rupees per annum), as may for the time being be fixed by a law of the Federal Legislature; and any law of the Federal Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specified provinces, municipalities, boards or authorities."

11. The Professions Tax Limitation Act, 1941, came into force on the 1st April 1942. It was passed in order to extend the limit laid down in Sub-section (1) of Section 142-A of the Government of India Act, 1935, to those provinces in which owing to the proviso to Sub-section (2) of Section 142A the limit of Es. 50/- did not then apply. The preamble to the Act is :

"Whereas by Section 142A of the Government of India Act, 1935, it is provided that no Provincial law relating to taxes for the benefit of a Province, or o.f 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 and that the total amount of such tax payable in respect of any one person shall not, after the 31st day of March 1939, exceed fifty rupees per annum;

And whereas it is further provided in the said section that any such tax which was in force during the financial year ending with the 31st day of March 1939, may continue to be lawfully levied at a, rate higher than fifty rupees per annum unless provision to the contrary is made by the Federal Legislature;

And whereas it is expedient that provision shall be made whereby the total amount payable in respect of any such person by way of such tax shall not exceed fifty rupees per annum;"

12. Section 142-A of the Government of India Act, 1935, came up for consideration before the Supreme Court in Mt. Jadao Bahuji" v. The Municipal Committee, Khandwa AIR 1961 SC 1486. The Supreme Court dealt with the three sub-sections of Section 142-A as follows :

"Sub-section (1) provided that a tax on professions, etc., would not be invalid on the ground that it related to a tax on income. Subsection (3) was a counter-part of Sub-section (1), and provided that the generality of the Entry in the Federal Legislative List relating to taxes on income would not be construed as in any way limited by the power of the Provincial Legislature to levy a tax on professions, etc. The fields of the two taxes were thus demarcated. No other implication arises from these two sub-sections.

It was also apprehended that under the guise of taxes on professions, etc., the Provincial Legislature might start their own scheme of a tax on income, thus subjecting incomes from professions, etc., to an additional tax of the nature of Income Tax. A limit was therefore placed upon the amount which could be collected by way of tax on professions, etc., and that limit was Rs. 50 per annum per person. The second Sub-section achieved this result. It was, however,

realised that the tax being an old tax, there were laws under which the limit of Rs. 50/- was already exceeded in relation to a province, municipality, board or like authority, and the imposition of such a limit might displace their budgets after March 31, 1939. A proviso was, therefore, added to the second sub-section that if in the financial year ending with thirty-first day of March, nineteen hundred and thirty-nine there was in force in the case of any Province, etc., a tax on professions, trades, callings or employments the rate or the maximum rate of which exceeded Rs. 50/- per annum, the provisions of the second sub-section shall have effect, (unless for the time being provision to the contrary was made by a law of the Federal Legislature) as if instead of Rs. 50/- per annum there was substituted a reference to the rate or maximum rate exceeding Rs. 50/-. Where no such law was passed by the Federal Legislature, the tax even in excess of Rs. 50/- continued to be valid."; and said :

"There can be no doubt that if a law was passed after the amendment and sought to impose taxes on professions, etc., for any period after March 31, 1939, it had to conform to the limit prescribed by Section 142A(2)."

13. The amendments introduced by the notification dated the 15th February 1956 and validated by Act 14 of 1958, are amendments which go beyond the formal alterations necessitated by the replacement of the Travancore Income-tax Act, 1121 (M. E.), by the Indian Income Tax Act, 1922, with effect from the 1st April, 1950. The alterations do not merely preserve the old tax; they rope in the entire profits of the assessee from the whole of the Indian Union for the purpose of calculation. The substitution of the words "whole of the Indian Union" for the words "whole State" can operate to the detriment of the assessee and we cannot but conclude that (1961) Ker LJ 971 : *Harrisons and Crossfield Ltd., Quilon and Others Vs. Commissioner, Quilon Municipality and Others*, was rightly decided. The maximum that could perhaps have been done was to word the proviso to Rule 18 (2) as follows :

"Provided that in the case of a company or person assessable to Income Tax, the total profits earned by the company or person within the area of the old Travancore State for the year comprising the half-year for which the profession tax is to be levied, shall be divided in the proportion of the turnover of the business of the company or person in the Municipality and outside but within the area of the old Travancore State for purposes of assessment to profession tax."

14. Counsel for the appellant invoked Section 7 of the Interpretation and General Clauses-Act, 1125 (M. E.) -- the section corresponds to Section 8 of the General Clauses Act, 1897 -- and contended that that provision will substitute the Indian Income Tax Act, 1922, in Rule 18 (2) for the references to the Travancore Income Tax Act, 1121 (M. E.), and that as a result the levy is sustainable quite apart from the notification dated the 15th February, 1956, and Act 14 of 1958. All that Section 7 says is:

"Where any Act repeals and re-enacts, with . or without modification any

provision of a former enactment, then, references in any other enactment or in any instrument to the provision so-repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

15. The old formula for the assessable income to the company was :

The total profits of the com- The turnover of its pany earned in the whole of business within the the Travancore State. Municipality

X The turnover of its business within the whole of the Tra-vaneore State. This has been altered to :

Total profits of the company The turnover of its earned in the whole of the business within the Indian Union. Municipality.

X The turnover of its business within the whole of the Indian Union.

Such a change is opposed to Article 276(2) of the Constitution, is unauthorised by the proviso thereto, and cannot be sustained.

16. It follows that the Writ Appeal should be dismissed and we do so. The appellant will pay the, costs of the respondent, . advocate"s fee Rs. 150.-.