KUNWAR TRIVIKRAM NARAIN SINGH

v.

STATE OF UTTAR PRADESH AND OTHERS

September 25, 1964

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI JJ.)

Agricultural Income-tax—Assessment made by Assistant Collector quashed for want of jurisdiction—Retrospective amendment of law conferring jurisdiction on Assistant Collectors—Fresh assessment whether barred by limitation—U.P. Agricultural Income-tax Act, 1948, (*U.P. Act* 3 *of* 1949), *as amended by U.P. Act* 14 *of* 1956.

The appellant was assessed to agricultural income-tax by the Assistant Collector, Banaras, U.P. Act 3 of 1949, under which assessment was made, mentioned only the 'Collector' as competent to make assessment. The assessment made by the Assistant Collector was therefore set aside by the Collector. Subsequently the law was amended by U.P. Act 14 of 1956 to provide that the word 'Collector' would include 'Assistant Collector' and that the Collector could review his earlier orders quashing assessments on the ground of want of jurisdiction, if application for review were made to him by any of the parties within 90 days of the coming into force of the amendment. Such application having been filed in the appellant's case, the Collector set aside his earlier orders quashing the assessment, and the Assistant Collector made a fresh assessment. The fresh assessment was challenged by the appellant by writ petition in the High Court and having failed there, the appellant came to the Supreme Court by special leave.

It was contended on behalf of the appellant that the assessment made by virtue of the provisions of the amending Act was barred by limitation because the retrospective operation of the provisions relating to jurisdiction would not extend the time for making the assessment.

HELD : The Collector's order on the review application had the effect of restoring the earlier proceedings. No question of limitation could possibly arise, for those proceedings were initiated in time and must be deemed to have been pending throughout, and the fresh assessment was made in those very proceedings. [339 A-B].

S. C. Prashar v. *Vasantsen*, A.I.R. 1963 S. C. 1356 and *Commissioner of Income-tax, Bihar* v. *Lakhmir Singh*, A.I.R. 1963 S. C. 1394, held inapplicable.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 799 of 1963.

Appeal by special leave from the judgment and decree dated March 1, 1961 of the Allahabad High Court in Special Appeal No. 205 of 1958.

S. P. Varma for the appellant.

C. B. Agarwala, O. P. Rana and *Atiqur Rehman*, for the respondents.

The Judgment of the Court was delivered by

Subba Rao J. This appeal by special leave raises the question of the scope of the retrospective operation of the U.P. Agricultural Income-tax (Amendment) Act, 1956 (U.P. Act No. 14 of 1956).

The facts are simple and they are as follows: On January 10, 1953, for the assessment year 1952-53, the Additional Collector, Banaras, assessed the appellant to agricultural income-tax under the U.P. Agricultural Income-tax Act, 1948 (U.P. Act 3 of 1949). On February 9, 1956, U.P. Agricultural Income-tax (Amendment) Ordinance, 1956 (2 of 1956) was passed enacting that the word "Collector" shall always be deemed to include Additional Collector. That Ordinance was later replaced by the U.P. Agricultural Income-tax (Amendment) Act 14 of 1956. On an application filed by the appellant, the Collector by his order dated May 9, 1956, revoked his earlier order and directed the Additional Collector to proceed to assess the appellant in accordance with law. Thereupon, the Additional Collector resumed proceedings and on June 7, 1956, passed a fresh assessment order imposing a tax of Rs. 42,761 on the appellant, and on July 4, 1956, he issued a notice to the appellant for payment of the tax. On August 7, 1956, the appellant filed a petition under Art. 226 of the Constitution in the High Court of Judicature at Allahabad for quashing the order of assessment and the notice issued pursuant thereto. The petition was heard, in the first instance, by Tandon J., who dismissed the same with costs. The appeal preferred by the appellant against that order to a Division Bench was also dismissed. Hence the present appeal.

Mr. S. P. Varma, learned counsel for the appellant contended that (i) the respondent's right to assess the appellant to tax was barred by limitation and, therefore, the Act could not have the effect of reviving the said right; and (ii) the amount of *malikhana* could not be in law the subject-matter of assessment.

The second point was not raised in the High Court. We did not permit the learned counsel to raise the point for the first time before us.

The first point turns upon the relevant provisions of Act 3 of 1949 and Act 14 of 1956. Under Act 3 of 1949 the definition of "Collector" did not include "Additional Collector". Act 14 of 1956 received the assent of the Governor on April 17, 1956, and was published in the U.P. Gazette (Extraordinary)

dated May 19, 1956. Section 2 of Act 14 of 1956 reads:

> "In section 2 of the U.P. Agricultural Income Tax Act, 1948 (hereinafter called the Principal Act), for clause (4), the following shall be and be deemed always to have been substituted—
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> . . . . . .
>
> "(4-a) 'Collector' shall have the meaning as in the U.P. Land Revenue Act, 1901, and will include an Additional Collector appointed under the said Act."

Section 11 of the Act reads :

> "Where before the commencement of this Act any Court or authority has, in any proceedings under the Principal Act, set aside any assessment made by an Additional Collector or Additional Assistant Collector in-charge of a sub-division merely on the ground that the assessing authority had no jurisdiction to make the assessment, any party to the proceedings may, at any time within ninety days from the date of commencement of this Act apply to the Court or authority for a review of the proceedings in the light of the provisions of this Act, and the Court or authority to which the application is made shall review the proceedings accordingly and make such order, if any, varying or revising the order previously made, as may be necessary to give effect to the provisions of the Principal Act as amended by sections 2 and 8 of this Act."

A combined reading of the said provisions establishes that if an application for review was filed within the time prescribed, the previous proceedings would be restored and the parties would be relegated to the position which they had occupied before the proceedings were quashed on the ground of want of jurisdiction.

In this case proceedings were initiated by the Additional Collector on January 10, 1953, for the purpose of assessing the appellant for the assessment year 1952-53. There was no flaw in the said proceedings except that the Additional Collector was not authorized by Act 3 of 1949, as it then stood, to make the said assessment. The Collector quashed those proceedings by his order dated November 26, 1955. After the amending Act was passed, within 90 days therefrom the appropriate income-tax authority had filed an application before the Collector to review his order. The Collector reviewed the order and

set aside the same. The result was that the proceedings before the Additional Collector were restored. As by the amendment the Additional Collector must be deemed to have been the Collector from the inception of the Principal Act itself, the said proceedings must be deemed to have been initiated before the proper authority under the Principal Act. In this view no question of limitation could possibly arise, for the proceedings were initiated in time and must be deemed to have been pending throughout and the fresh assessment was made in the said proceedings.

The decisions cited by the learned counsel are really beside the mark. He relied upon the judgments of this Court in *S. C. Prashar v. Vasantsen*(1), and *Commissioner of Income-tax Bihar* v. *Lakhmir Singh*(2). One of the questions raised in those cases was whether an amending Act revived a remedy which had become barred before the amendment was introduced. That aspect of the question has no relevance to the present enquiry. Here we are dealing with an Act whose constitutionality is not questioned. It has expressly conferred power on the appropriate authority to review its previous order if an application was filed within the time prescribed. When once that power of review was exercised, the proceedings were reopened. In this view, no question of the application of an amending Act to a barred claim would arise.

In the result we hold that the order of the High Court is correct and dismiss the appeal with costs.

Appeal dismissed.