

RAJPUTANA MINING AGENCIES LTD.

1960

v.

August 31.

UNION OF INDIA AND ANOTHER.

(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA,
J. C. SHAH AND N. RAJAGOPALA AYYANGAR, JJ.)

*Income Tax—Applicability of enactment to Part B States—
Indian Income-tax Act, 1922 (II of 1922), as amended by Indian
Income-tax (Amendment) Act (25 of 1953), s. 14(2)(c).*

The appellant, a private limited company, was incorporated in 1954 in the former Kotah State which had integrated with the United States of Rajasthan in 1949. The United States of Rajasthan became State of Rajasthan, a Part B State. The Indian Finance Act, 1950, made the Indian Income-tax Act, 1922, applicable to Part B States with effect from April 1, 1950, whereupon Rajasthan became a taxable territory. The Income-tax (Amendment) Act, 1953, amended s. 14(2)(c) of the Indian Income-tax Act, 1922. Thereupon the Income-tax authorities sought to tax the profits and income of the appellant for the assessment year 1950-51 who claimed exemption under s. 14(2)(c) of the Indian Income-tax Act, 1922, as it stood before the amendment in 1953. The question for decision was whether in view of the decision of this Court in *Madan Gopal's case* it was still open to the appellant to contend that the amendment operated from April 1, 1950, and that income accrued prior to April 1, 1950, was still exempt although the exemption was withdrawn only from April 1, 1950.

Held, that the withdrawal of the exemption in the assessment year 1950-51 conversely affected the income of the previous year 1949-50. The application of the Indian Income-tax Act made Rajasthan a taxable territory subject to the Indian Income-tax law and Parliament was competent to enact a new law for the area, just as it did for the whole of the rest of India.

The fiction in the amendment made in s. 14(2)(c) made the exemption in respect of liability to tax the income for the year 1949-50 to disappear as if it had never been granted and obliterated the exemption. The whole purpose and intent of the amendment was to reach this result from the assessment year 1950-51 onwards, and there could be no saving. The argument assumes the premise that the Income-tax Act was incorporated in the Indian Finance Act, 1950, but there is neither precedent nor warrant for the assumption that when one Act applies another Act to some territory, the latter Act must be taken to be incorporated in the former Act. It may be otherwise, if there were words to show that the earlier Act is to be deemed to be re-enacted by the new Act.

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Union of India v. Madan Gopal Kabra, [1954] S.C.R. 541, referred.*Rajputana Mining Agencies Ltd.*

v.

Union of India & Another

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 26 of 1956.

Appeal by Special Leave from the Judgment and Order dated the 22nd April, 1954, of the Rajasthan High Court in Writ Petition No. 76 of 1951.

N. C. Chatterjee, *J. B. Dadachanji* and *M. S. K. Aiyangar*, for the appellants.

K. N. Rajagopal Sastri and *D. Gupta*, for the respondents.

1960. August 31. The Judgment of the Court was delivered by

• *Hidayatullah J.*

HIDAYATULLAH J.—This is an appeal with the special leave of this Court against the judgment of the High Court of Rajasthan dated April 22, 1954. The appellant is a private limited Company, which was incorporated in 1945 in the former Kotah State. The income-tax authorities sought to tax its profits and income for the assessment year 1950-51 corresponding to the previous year, 1949-50. The appellant claimed exemption under s. 14(2)(c) of the Indian Income-tax Act, 1922, as it stood before the amendment in 1953, contending that the exemption stood good even after the amendment. This claim was rejected by the High Court, which was moved under Art. 226 of the Constitution. Hence this appeal.

Prior to the integration of Kotah State into the United State of Rajasthan in 1949, there was no income-tax law in force in Kotah State. Till the formation of the State of Rajasthan, there was no such law in force in any part of Rajasthan, except Bundi State. The Indian Finance Act of 1950 made the Indian Income-tax Act, 1922, applicable to the whole of India, except the State of Jammu and Kashmir, and suitably amended the Indian Income-tax Act. Rajasthan then became, from April 1, 1950, a taxable territory.

For the assessment year 1950-51, income-tax was sought to be imposed in the State of Rajasthan. One

Madan Gopal Kabra move the High Court under Art. 226 of the Constitution to restrain the taxing authorities from claiming tax for the period prior to April 1, 1950, contending that inasmuch as Rajasthan was not a taxable territory before April 1, 1950, no tax for a period prior to that date could be demanded. This Court in an appeal by the Department against the decision of the High Court of Rajasthan, which had accepted the contention, held that the tax was leviable. It is not necessary to give the details of the decision on that occasion. The judgment of this Court is reported in *The Union of India v. Madan Gopal Kabra* (1).

The present appellant and fourteen others filed petitions under Art. 226 of the Constitution, urging fresh grounds by a later amendment. Their contention was that s. 14(2)(c) of the Indian Income-tax Act, as it stood on April 1, 1950, granted an exemption, and that this exemption was not affected by the amendment of the said provision in 1953 even though the amendment was retrospective from April 1, 1950, unless the Finance Act, 1950, which applied the Income-tax Act to this area was also amended. This contention was not accepted by the High Court which dismissed the petition under Art. 226, holding *inter alia* that this point was also decided by this Court against Madan Gopal Kabra.

In this appeal, this point alone is argued, and it is contended that the point is still open for decision. Section 14(2)(c), as it stood before the amendment in 1953, read as follows :

“The tax shall not be payable by an assessee—
(c) in respect of any income, profits or gains accruing or arising to him within Part B State unless such income, profits or gains are received or deemed to be received in or are brought into the taxable territories in the previous year by or on behalf of the assessee, or are assessable under section 12-B or section 42”.

The amendment provided :—

“In section 14 of the principal Act in clause (c) of sub-section (2), for the words and letter ‘Part B State’

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the words 'the State of Jammu and Kashmir' shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1950". The result of this amendment was described by this Court in *Kabra's case* (1) to be as follows:

"It may be mentioned here that the exemption from tax under s. 14(2)(c) of the Indian Act of income accruing within Part B States was abrogated, except as regards the State of Jammu and Kashmir, by the amendment of that provision with effect from the first day of April, 1950."

Mr. N. C. Chatterjee appearing for the appellant contends that the point cannot be considered to have been finally decided, and that the remark is descriptive only of what the Parliament had purported to do. He claims that the point can and should be reconsidered. In support of his contention, he urges that the effect of the passing of the Indian Finance Act, 1950, and the application of the Indian Income-tax Act to Rajasthan and other Part B States was to incorporate the Indian Income-tax Act by reference in the Indian Finance Act with such modifications and amendments as were then made. Any subsequent amendment of the Indian Income-tax Act had no effect on the original Act as incorporated by reference in the Indian Finance Act, unless the latter was suitably amended also. The argument which did not find favour in *Kabra's case* (1) was again advanced, though in another form. It is that the amendment operates from April 1, 1950, and that the income accrued prior to April 1, 1950, and it was still exempt, because the exemption was withdrawn only from April 1, 1950.

In our opinion, both the arguments have no substance, and the position indicated by this Court in the passage cited earlier, represents the true state of the law. To begin with, the exemption is in respect of liability to tax in any year of assessment, and the exemption in the assessment year 1950-51 was in regard to the income in the previous year. For the same reason, the withdrawal of the exemption in the assessment year 1950-51 conversely affected the

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income of the previous year, 1949-50 which is the subject-matter of tax in this case. The next argument misconceives the nature of the Indian Finance Act, 1950. By that Act, the Indian Income-tax Act was applied, but the Income-tax Act was not incorporated by reference in the Indian Finance Act to become a part of it. The application of the Indian Income-tax Act made Rajasthan a taxable territory subject to the Indian Income-tax law, and Parliament was competent to enact a new law for the area, just as it did for the whole of the rest of India. The fiction in the amendment made the exemption to disappear as if it had never been granted, and unless there was a saving, the amendment must operate to obliterate the exemption. In fact, the whole purpose and intent of the amendment was to reach this result from the assessment year 1950-51 onwards, and there could be no saving. The argument assumes the premise that the Income-tax Act was incorporated in the Indian Finance Act, 1950, but there is neither precedent nor warrant for the assumption that when one Act applies another Act to some territory, the latter Act must be taken to be incorporated in the former Act. It may be otherwise, if there were words to show that the earlier Act is to be deemed to be re-enacted by the new Act. The Indian Finance Act, 1950, was concerned with the application of the Indian Income-tax Act to this area, which it did by amending the definition of 'taxable territory' in the Indian Income-tax Act and by applying that Act to the territory. Thereafter, the Indian Parliament could amend the Income-tax Act retrospectively, and the amendment would apply also to the new taxable territory. In our opinion, both the arguments are not valid.

The appeal fails, and will be dismissed with costs.

Appeal dismissed.

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