

D. R. MADHAVAKRISHNAIAH

Dec. 16
1953

v.

THE INCOME-TAX OFFICER, BANGALORE.

[PATANJALI SASTRI C.J., MEHR CHAND MAHAJAN,
S. R. DAS, GHULAM HASAN and JAGANNADHADAS JJ.]*Finance Act (XXV of 1950), s. 13, proviso—Validity thereof—
Constitution of Indian, Art. 277.*

The assessee challenged the jurisdiction of the Income-tax Officer, Special Survey Circle, Bangalore, to assess income-tax and super-tax on his income accruing prior to April 1, 1950, in the State of Mysore, on the ground that the proviso to s. 13 of the Indian Finance Act, 1950, by virtue of which he was exercising his power was *ultra vires* and void as the Parliament had no power to make a law authorising any officer appointed under the Indian Income-tax Act to levy tax under the Mysore law prior to the Constitution.

It was contended (i) that on general constitutional principles the Union Parliament had no power to make a law having retrospective effect with reference to pre-Constitution period, (ii) that the Parliament was also prohibited by Art. 277 from making a law authorising such officers as in the present case to act in the State of Mysore :

Held, (repelling the contentions) (i) that the Parliament had such power *vide* the judgment delivered in Case No. 296 of 1951, (ii) that while Art. 277 authorises the continued levy of taxes lawfully levied by the Government of the State before the commencement of the Constitution and their application to the same purposes as before, even after the Constitution came into force, there is nothing in the article to warrant any implication that such taxes should continue to be levied, assessed and collected by the same State authorities as before the Constitution and there is nothing in Art. 277 to preclude Parliament making a law providing for the levy and collection of income-tax and super-tax under the Mysore Act through authorities appointed under the Indian Income-tax Act.

CIVIL APPELLATE JURISDICTION : Civil Appeals
Nos. 209 and 210 of 1953.

Appeals by special leave against the Judgment and Orders dated 4th April, 1953, of the High Court of Judicature of Mysore at Bangalore (Medapa C. J. and Vasudevamurthy J.) in Civil Petitions Nos. 20 and 21 of 1953.

1953

D. R.
Madhava-
krishnaiah
v.
The Income-tax
Officer,
Bangalore.

Patanjali Sastri
C. J.

M. Ramaswamy, Senior Advocate, (B. Neelakanta, with him) for the appellants.

M. C. Setalvad, Attorney-General for India, (Porus A. Mehta, with him) for the respondent.

1953. December 16. The Judgment of the Court was delivered by

PATANJALI SASTRI C. J.—These two connected appeals arise out of applications made to the High Court of Judicature at Bangalore under Art. 226 of the Constitution challenging the jurisdiction of the Income-tax Officer, Special Survey Circle, Bangalore, to assess the appellant to income-tax and super-tax on his income accruing prior to April 1, 1950, in the State of Mysore and praying for the issue of appropriate writs in that behalf. The applications were dismissed by the court and leave to appeal having been refused, the appellant has brought these appeals by special leave of this court.

It is a matter of admission that the officer making the assessments was an officer appointed under the Indian Income-tax Act, 1922, and that in making such assessments he was applying the income-tax law in force in the State of Mysore down to the end of the year of account 1948-49. The officer was exercising jurisdiction in the State by virtue of the proviso to section 13 of the Indian Finance Act, 1950, which reads as follows :—

Repeals and Savings.—(1) If immediately before the 1st day of April, 1950, there is in force in any Part B State other than Jammu and Kashmir or in Manipur, Tripura or Vindhya Pradesh or in the merged territory of Cooch-Bihar any law relating to income-tax or super-tax or tax on profits of business, that law shall cease to have effect except for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922, for the year ending on the 31st day of March, 1951, or for any subsequent year, or, as the case may be, the levy, assessment and

collection of the tax on profits of business for any chargeable accounting period ending on or before the 31st day of March, 1949 :

Provided that any reference in any such law to an officer, authority, tribunal or court shall be construed as a reference to the corresponding officer, authority, tribunal or court appointed or constituted under the said Act, and if any question arises as to who such corresponding officer, authority, tribunal or court is, the decision of the Central Government thereon shall be final....”

It is contended that the proviso is *ultra vires* and void as the Union Parliament had no power to make a law authorising any officer or authority or Tribunal or Court appointed or constituted under the Indian Income-tax Act, 1922, to levy, assess and collect income-tax and super-tax payable under the Mysore law prior to the commencement of the Constitution of India. The contention is based on two grounds: namely, firstly, on general constitutional principles the Union Parliament had no power to make a law having retrospective operation with reference to the pre-Constitution period; and secondly, the Union Parliament is prohibited by article 277 of the Constitution by necessary implication from making a law grafting on the Mysore income-tax law the machinery for assessment and collection provided under the Indian Income-tax Act, 1922, for purposes of assessment thereunder.

So far as the first ground is concerned, the case is governed by the judgment just delivered in the Rajasthan case [*Union of India v. Madan Gopal Kabra* (1)]. It remains only to deal with the second ground based on article 277. That article reads thus :

“Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority are body for the purposes of the State, municipality, district or other local area, may, notwithstanding that

(1) *Infra*. p. 541.

1953

D. R.
Madhava-
krishnaiah

v.
The Income-tax
Officer,
Bangalore.

Patanjali Sastri
C. J.

1953

*D. R.
Madhava-
krishnaiah*
v.

*The Income-tax
Officer,
Bangalore.*

*Patanjali Sastri
C. J.*

those taxes, duties, cesses, or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

It was urged that, inasmuch as the article authorises, among others, the income-tax and super-tax which was being lawfully levied by the Government of Mysore prior to the commencement of the Constitution to be levied and to be applied to the same purposes even after the commencement of the Constitution until provision to the contrary is made by Parliament by law, and no such law was made by Parliament till April 1, 1950, when the Indian Finance Act, 1950, was enacted, it followed by necessary implication, the Mysore law of income-tax must be applied for the levy, assessment and collection of such taxes and, as the legislative power conferred on Parliament by article 245 is subject to the provisions of the Constitution including article 277, Parliament had no power to legislate, grafting officers and authorities appointed under the Indian Income-tax Act, on the Mysore State, for the levy, assessment and collection of the tax under the State law. We see no force in this argument. While article 277 undoubtedly authorises the continued levy of taxes lawfully levied by the Government of the State before the commencement of the Constitution and their application to the same purposes as before, even after the Constitution came into force, there is nothing in the article to warrant any implication that such taxes should continue to be levied, assessed and collected by the same State authorities as before the Constitution. As the High Court rightly pointed out, it would obviously have been inconvenient and unnecessary to have officers appointed under the Mysore Income-tax Act continuing to function only in respect of the earlier assessment years side by side with officers appointed under the Indian Income-tax Act also functioning in the State for assessments subsequent to April 1, 1950. Both as a measure of economy and with a view to smooth and efficient management, it

was obviously necessary and desirable that the change-over from the Mysore income-tax law to the Indian Income-tax Act should be in the way provided by section 13 of the Indian Finance Act, 1950. We find nothing in article 277 of the Constitution to preclude Parliament making a law providing for the levy and collection of income-tax and super-tax under the Mysore Act through authorities appointed under the Indian Income-tax Act. Accordingly, we hold that the Income-tax Officer, Special Survey Circle, Bangalore, had jurisdiction to assess the appellant to income-tax and super-tax in respect of the income of the period prior to the commencement of the Constitution.

The appeals fail and are dismissed with costs.

Appeals dismissed.

Agent for the appellant : *M. S. K. Sastri.*

Agent for the respondent : *G. H. Rajadhyaksha.*

THE UNION OF INDIA

v.

MADAN GOPAL KABRA.

[PATANJALI SASTRI C.J., MEHR CHAND MAHAJAN,
S. R. DAS, GHULAM HASAN and
JAGANNADHADAS JJ.]

Indian Income-tax Act (XI of 1922) as amended by Finance Act (XXV of 1950), s. 3—Taxable territories—Meaning of—Section 2 (14-A) proviso (b) (i) and (iii)—Income accruing to assessee in State of Rajasthan in 1949-50—Liability to income-tax—Sections 3 and 4 of Indian Income-tax Act and s. 2 of Finance Act and proviso to the amended s. 2 (14-A)—Constitution of India, Arts. 245 and 246 read with entry 82 of List I of Seventh Schedule—Parliament competent to make laws with respect to taxes for the whole of India—Constitution competent to make laws having retrospective operation for pre-Constitution period.

Respondent was residing and carrying on business in the District of Jodhpur in Rajasthan, a Part B State. His income arising therein during the accounting year 1949-50 was sought to be assessed to income-tax for the year 1950-51 under the Indian Income-tax Act as amended by the Indian Finance Act. He presented a petition under art. 226 to the High Court praying

1953

D. R.

*Madhava-
krishnaiah*

v.

*The Income-tax
Officer,
Bangalore.*

*Patanjali Sastri
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1953

Dec. 16.