1951

THE COMMISSIONER OF INCOME-TAX v. THE CENTURY SPINNING AND MANUFACTURING CO., LTD.

Chagla C. J.

reserves. But, what makes a part of the profits reserves is not the fact that they are used in the business but that they are consciously kept back and not distributed amongst the share-holders as dividends. No question of distributing any of the profits between January 1 and April 1, 1946, to the share-holders ever arose or could arise and, therefore, no question could arise of these profits constituting reserves during this period. The directors were never called upon to consider the question and in fact they did not consider the question as to whether part of the profits earned during this period should not be distributed as dividends but should be kept back for the purposes of the company. Therefore, we are unable to agree with the view taken by the Tribunal that the profits of the assessee company from January 1 to April 1, 1946, should be included in the reserves contemplated by r. 2 of the second schedule.

The result, therefore, is that we answer the first question referred to us in the affirmative and the second question in the negative. No order for the costs of the reference.

Attorney for appellant: *N. K. Petigara.*

Attorneys for respondent: *Kanga & Co.*

Answer accordingly.

A. J. P.

ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

1951 *March 28*

JAMNADAS PRABHUDAS, APPLICANT *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY, RESPONDENT.*

Indian Income-tax Act (XI of 1922), s. 9—Municipal Property Tax and Urban property tax, whether allowable deductions—Decision of the Supreme Court—Indian Income-tax (Amendment), Act LXXI of 1950—Amending the law declared by the Supreme Court—Constitution of India arts. 372, 141—Competency of the Parliament to amend pre-existing law.

* Income-tax Ref. No. 3 of 1950.

Article 372 (*1*) of the Constitution does not lay down any limitation upon the power of the Parliament to amend a pre-existing law. Its power of amendment is wide and untrammelled and in the exercise of that power if the Parliament amends the Indian Income-tax Act so as to declare by the amendment that the law was always what it has now declared it to be and not as declared by the Supreme Court, it is within the scope and ambit of the powers conferred upon the Parliament by the Constitution to do so.

Under art. 141, the law as declared by the Supreme Court is binding on all the courts so long as it is not amended or altered by Parliament. But when once Parliament amends or alters such law, it is the amended or altered law which becomes the law of the land and not the law as declared by the Supreme Court.

The assessee claimed a deduction of Rs. 54,915 which he had to pay as municipal and urban property taxes, from his income under s. 9 of the Income-Tax Act.

The High Court held that he was not entitled to the deduction; but the Supreme Court held that municipal and urban property taxes were permissible deductions.

The Union Government intervened and amended s. 9 by the Indian Income-tax (Amendment) Act (LXX of 1950) by adding an explanation to sub-s. (*1*) of s. 9 to the effect that the expression "annual value" did not include and was never intended to include any tax in respect of property or income from property levied by a local authority or a State Government or the Central Government.

Held, that it was competent to Parliament to retrospectively amend the Indian Income-tax Act which was in existence prior to the coming into force of the Constitution and that the Amending Act did not contravene any of the provisions of the Constitution.

The assessee owned about 49 buildings which he purchased from the firm of Jamnadas Prabhudas & Co. on retiring from the firm.

By an agreement dated May 30, 1940, the assessee gave a rent framing contract at Rs. 14,000 a month to the firm.

In respect of these properties, a sum of Rs. 54,914 was paid for municipal and urban property tax. The assessee claimed to deduct this amount from the rent received by him for the purposes of income-tax as being a permissible deduction under s. 9 (*1*) of the Income-tax Act.

The assessee also contended that the *bona fide* annual value of the properties should be fixed on the basis of the rent of Rs. 14,000 and not on the basis of the municipal valuation of the properties.

On the point of municipal and urban property-taxes the Income-tax Officer relying on the case of *Commissioner of*

1951

JAMNADAS PRABHUDAS v. THE COMMISSIONER OF INCOME-TAX

Chagla C. J.

Income-tax, Bombay v. *Mohomedbhoy I. M. Rowji* (1943 I. T. R. 320) and the case of *C. K Mamad Keyi* v. *Commissioner of Income-tax, Madras* (1943 I. T. R. 484) disallowed the claim.

As regards the proper annual value, the Income-tax officer held that mere lease rent could not be considered as annual value and the rent received from the contractor could not be considered as *bona-fide* letting value of the properties and the proper basis is the municipal valuation of the properties.

The assessee appealed to the Tribunal which confirmed the Income-tax Officer's decision.

The assessee then applied that the two questions should be referred to the High Court.

The Tribunal was of the opinion that the annual value of a property was a question of fact and not a question of law and refused to refer that question for the decision of the Court.

The Tribunal however referred the following question of law to the High Court.

"Whether the assessee is entitled to claim the sums paid as municipal property tax under s. 9 (*1*) (*iv*) of the Indian Income-tax Act and the sums paid as urban property tax under either s. 9 (*1*) (*iv*) or 9 (*1*) (*v*) of the Act."

The reference was heard.

Sir Jamshedji Kanga with *R. J. Kolah* and *N. A. Palkhiwala,* for the assessee.

C. K. Daphtary Advocate-General with *G. N. Joshi,* for the respondent.

CHAGLA C. J. In this reference we are concerned with a lease executed by the assessee on the May 30, 1940, by which he gave a rent framing contract to a particular party and under that contract he received a sum of Rs. 14,000 per month in respect of the various properties covered by the rent framing contract. The question that the Tribunal has raised on this reference is whether the assessee is entitled to claim the sums paid as municipal property tax under s. 9 (*1*) (*iv*) of the Indian Income Tax Act and the sums paid as urban property tax under either s. 9 (*1*) (*iv*) or s. 9 (*1*) (*v*) of the Act?

Now this Court has taken the view that these amounts are not permissible deductions under s. 9 of the Act.[1] The Supreme Court took a different view and came to the conclusion that they were permissible deductions. Therefore, if nothing more

[1] (1947) 49 Bom. L. R. 620. [2] (1950) 52 Bom. L. R. 764.

had happened and if the judgment of the Supreme Court had stood, we would have been bound to answer this question in favour of the assessee. But the Union Government intervened and passed an Ordinance No. XXVI of 1950 which has now taken the shape of an Act of Parliament, Act LXXI of 1950, and by s. 2 of the Ordinance and the Act it is provided:

"To sub-s. (*1*) of s. 9 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), the following Explanation shall be added, and, subject to the provisions of s. 3 of this Act, shall be deemed always to have been added, namely:—

For the purposes of clause (*iv*) of this sub-section, the expression "annual charge" does not include any tax in respect of property or income from property levied by a local authority or a State Government or the Central Government."

Therefore the effect of this Ordinance and Act was to restate the law as it was understood by this Court. If the Act is a valid piece of legislation, then Sir Jamshedji for the assessee does not dispute that he must fail on this question. But his contention is that this Act is void as offending against the various provisions of the Indian Constitution, and it is this contention that we have to examine because if the Act offends any provision of the Indian Constitution then the Act would be void and the law would be as declared by the Supreme Court.

The first contention of Sir Jamshedji is that it is not competent to Parliament retrospectively to deal with a piece of legislation which was in existence prior to the coming into force of the Constitution, and this argument is based on the terms of Article 372. That Article provides:

"(1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

Sir Jamshedji puts his argument in this way. He says that it is because of Article 372 that laws which were in force prior to the coming into force of the Constitution have been saved and the laws have been saved in the form and in the shape in which they were at the date when the Constitution came into force. Sir Jamshedji adds that the power of Parliament is restricted to altering or amending these laws prospectively, but they cannot amend the laws which were in existence at a

1951

JAMNADAS PRABHUDAS v. THE COMMISSIONER OF INCOME-TAX

Chagla C. J.

time when the Indian Parliament was itself not in existence. The Parliament which has come into existence as a result of our Constitution is a sovereign Parliament, it is sovereign within its own sphere, and its legislative competence is to be found in the various Articles of the Constitution. It would not be proper to put any limitation or qualification upon the legislative competence of the Indian Parliament, unless we find some such limitation or qualification expressly laid down in the Constitution itself. In the first place, the legislative competence of Parliament is to be found in Article 245. That Article provides:

"(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

Therefore legislative competence is conferred upon Parliament in the widest possible terms. Then the following Articles lay down what are the various subjects on which the Parliament and the State Legislature can legislate. There is no dispute that as far as the subject matter is concerned, this particular law is within the sphere of the Indian Parliament. If the subject-matter is within the legislative competence of the Indian Parliament, then there is no restriction placed upon its power to legislate in the whole field with regard to that subject under Article 245 (1). Again, turning to Article 372 (*1*) although the laws in force prior to the coming into force of the Constitution have been saved by Article 372, it must not be overlooked that the Legislature has been given the power to alter, repeal or amend any of these laws, and what the Indian Parliament has done by this Act is to amend a law which was in existence at the date of the coming into force of the Constitution and which was saved by Article 372 (*1*) Article 372 (1) does not lay down any limitation upon the power of the Parliament to amend a pre-existing law. Its power of amendment is wide and untrammelled, and in the exercise of that power if the Parliament has chosen to amend the Indian Income Tax Act and to declare that the law was always what it has declared it to be, in our opinion that is perfectly within the scope and ambit of the powers conferred upon the Indian Parliament by the Constitution.

Our attention is then drawn to Article 141 which provides: "The law declared by the Supreme Court shall be binding on all courts within the territory of India." Sir Jamshedji

almost suggests that the power of the judiciary is so great under the Constitution that the law once declared by the Supreme Court cannot be altered or amended by any competent Legislature. Surely that is not the meaning of Article 141. When the Supreme Court declared the law, it declared the law on the basis of the Indian Income Tax Act as it then was, and so long as the Indian Income Tax Act continued to remain in the same form, undoubtedly the law declared by the Supreme Court was the law of the land and no one can question that law. But when the Parliament amended the law, then it was the amended law that became the law of the land and not the law as declared by the Supreme Court.

It is finally urged by Sir Jamshedji that this Act offends Article 14 of the Constitution which provides for equality before the law, and it is pointed out that an invidious exception has been made in the case of the appellant before the Supreme Court who succeeded in getting a judgment from the Supreme Court before October 7, 1950. It is argued that there is no reason why other assessees should have to pay the tax as provided by the amended law and an exception should be made in the case of a particular individual, who successfully carried his appeal to the Supreme Court and got the Supreme Court to hear his appeal. It is true that on the face of the law a discrimination has been made in favour of a particular assessee, and what we have to find is whether there was any reasonable basis for making this discrimination. It is quite a reasonable view which Parliament could have taken and has taken that in the case of those assessees who prosecuted their appeals and got a judgment before October 7, 1950, there should be some relaxation as far as the income-tax law is concerned. They took the trouble to prefer the appeal, they took the trouble to prosecute it, they incurred costs, and they succeeded in getting a judgment from the Supreme Court. A possible view also was that the judgment of the Supreme Court should be respected, as it should always be respected, by the Legislature of the land, and although they dealt with future cases, the Parliament perhaps did not intend that the actual judgment delivered by the Supreme Court in a particular reference before them should be altered or modified by the law which the Legislature was passing. It does not seem to us that in making this exception a discrimination was made by the Legislature which cannot be justified as being on a reasonable basis.

1951

JAMNADAS PRABHUDAS OF v. THE COMMISSIONER INCOME-TAX

Chagla C. J.

The result therefore is that in our opinion the challenge made by Sir Jamshedji upon the Act as contravening any of the provisions of the Constitution cannot be sustained.

There is one more point in this reference. A notice of motion has been taken out by the assessee for asking the Tribunal to refer certain questions of law which according to the assessee did arise from the order of the Tribunal and which have not been referred by the Tribunal, and the questions that are suggested in this motion arise out of an interpretation of s. 9 (2) of the Act. Now the tax on property is to be paid in respect of the *bona fide* annual value of the property, and annual value is defined in sub-clause (2) as meaning the sum for which the property might reasonably be expected to be let from year to year. Therefore, what the law contemplates is not the actual rent received by the owner of the property, but a notional rent, and the notional rent is to be gathered from what a hypothetical tenant would pay for the property under assessment. Undoubtedly, if actual rent is received, that would be an important factor for the taxing authorities to consider, but that would not in every case be the proper annual value as contemplated by the Act. Take a case like this. An owner of a property may let out his property to a tenant and enter into an agreement with him that all charges which are normally and ordinarily paid by the landlord should be paid by the tenant. In consideration of this he may get much less rent than he would have got if he himself was liable to pay all these ordinary charges. Surely, it cannot be suggested that in a case like this the annual value of the property is the rent which the owner actually receives. He not only receives rent from the tenant, but he receives other consideration in the shape of the tenant paying the charges for which he would be ordinarily liable.

Now in this case it has been found as a fact that although the assessee receives Rs. 14,000 from the lessee, he also receives other consideration and those considerations are set out in the order of the Income Tax Officer which is embodied in the statement of the case, and those considerations are that expenses for current repairs, salaries of sweepers and payment of electric bills are all to be borne by the lessee. Ordinarily these would be borne by the landlord. The Tribunal has also clearly stated in its judgment that the rent realised by the assessee is no doubt an important piece of material which was

before it for deciding what was the *bona fide* annual value of this property. But it rightly points out that that by itself is not conclusive, and what it has accepted is the municipal valuation of this property. Sir Jamshedi's grievance is that the Tribunal was wrong in accepting the municipal valuation. Sir Jamshedji says that the Tribunal did not take the trouble to find out for itself what was the proper annual value, but it borrowed the opinion formed by the municipality of the proper annual value. If the Tribunal had laid down as a principle that in every case municipal valuation should be the only determining factor, we would undoubtedly have interfered and we would have asked the Tribunal to state a question on which we would have laid down what the correct law was. But as far as this particular case is concerned, it is clear that the municipal valuation by itself has not been the only evidence which the Tribunal has considered. Not only that, but the Tribunal has not laid down that in every case the municipal valuation should be the only test that should be applied in order to determine what is the annual value of a property. As it happens in this particular case on a consideration of all the factors the Tribunal has come to the conclusion that the proper annual value of the property is the value fixed by the Municipality. Under these circumstances we do not think any question of law arises which we should ask the Tribunal to refer to us.

The result is that the motion fails and must be dismissed with costs.

With regard to the question submitted to us, our answer must be in the negative. There will be no order as to costs on the reference.

Attorneys for Applicant: *Manilal, Ambalal & Co.*

Attorneys for Respondents: *N. K. Petigara.*

Appeal dismissed with costs.

A. J. P.

ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

THE STATE OF BOMBAY, APPELLANT *v.* MOHANLAL KAPUR, RESPONDENT.*

1951
April 18

Bombay Land Requisition Act (Bom. XXXIII of 1948), s. 6 (4) (a)—Order of Requisition—The purpose of the State or any other public

* App. No. 31 of 1951 Misc. Appln. No. 4 of 1951.