(1965) 12 SC CK 0049

Supreme Court of India

Case No: Appeal (civil) 980 of 1964

Karimtharuvi Tea Estate Ltd.		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: Dec. 15, 1965

Acts Referred:

- Income Tax Act, 1961 - Section 10(2)
- Kerala Surcharge on Taxes Act, 1957 - Section 1(3), 2, 6

Citation: AIR 1966 SC 1385 : (1966) 60 ITR 262 : (1966) 3 SCR 93

Hon'ble Judges: P.B. Gajendragadkar, C.J; V. Ramaswami, J; P. Satyanarayana Raju, J; M. Hidayatullah, J; K. N. Wanchoo, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Satyanarayana Raju, J.
This appeal, by special leave, against the judgment and order of the Kerala High Court, dated July 25, 1963 in income tax Referred Case No. 10 of 1962 (Agricultural), raises the question as to the true scope and operation of s. 2 of the Kerala Surcharge on Taxes Act, 1957 (Ker. Act XI of 1957), hereinafter called the Surcharge Act.

2. The facts which have given rise to this appeal may be briefly stated. For the assessment year 1957-58, the appellant company was assessed to agricultural income tax under the Kerala Agricultural income tax Act, 1950. In the assessment, a surcharge at the rate of 5% on the agricultural income tax and super tax was also levied and collected from the appellant under the provisions of the Surcharge Act.

3. The appellant appealed to the Deputy Commissioner of Agricultural income tax and Sales Tax, South Zone, Quilon, objecting to the imposition of surcharge on the ground that the law applicable to assessment for 1957-58 under the provisions of the Agricultural

income tax Act was the law in force on April 1, 1957 and as the Surcharge Act which came into force only from September 1, 1957 did not have any retrospective effect, the surcharge could not be levied for that year. By his order, dated November 14, 1959, the Deputy Commissioner rejected these objections.

4. Thereupon, the appellant preferred a further appeal to the Kerala Agricultural income tax Appellate Tribunal, Trivandrum. By its order, dated August 2, 1961, the appellate Tribunal upheld the contention of the appellant holding that the Surcharge Act could not have retrospective operation unless there was a specific provision therein to that effect.

5. On the application of the respondent, the Tribunal stated a case to the Kerala High Court and referred the following question of law :

"Whether any surcharge can be levied on the agricultural income tax payable for the assessment year 1957-58 ?"

6. By judgment, dated July 25, 1963, the Division Bench of the High Court answered the question in the affirmative, against the appellant. The appellant then applied to this Court and obtained special leave to appeal against the judgment and order of the High Court.

7. It is contended for the appellant, by Mr.Setalvad, learned counsel, that the Surcharge Act having come into force on September 1, 1957 and the said Act not being retrospective in operation, it could not be regarded as law in force at the commencement of the year of assessment viz. 1957-58. It is also contended that in the absence of express enactment or necessary intendment, the provisions of the statute which affect a right in existence at the time of the passing of that enactment are not to be applied retrospective and that the interpretation placed by the High Court on the scope of sub-s. (3) off s. 1 of the Surcharge Act is erroneous.

8. Before dealing with these contentions, it would be convenient to read the material provision of the Surcharge Act. Sub-section (3) of s. 1 reads :

"It shall come into force on such date as the Government may, by notification in the Gazette, appoint."

9. By a notification, dated August 27, 1957, the Government of Kerala appointed the first day of September 1957 as the date on which the said Act shall come into force. By a further notification dated November 28, 1957, the Government of Kerala, in exercise of the powers conferred on it by s. 6 of that Act notified that surcharge shall not be levied on assessments on the turnover or income of the year 1956-57 onwards but that it shall be confined only to assessments made on or after September 1, 1957 and that where the turnover or income for periods prior to 1956-57 is pending assessment. surcharge shall not be levied on such assessments when made. We are not now called upon to determine the validity of these regulations.

10. Now, it is well-settled that the income tax Act, as it stands amended on the first day off April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.

11. In Scindia Steam Navigation Co. Ltd. v. Commr. of Inc. Tax, 24 I.T.R.686 a Division Bench of Bombay High Court, consisting of Chagla C.J., and Tendolkar J., considered the question as to the effect of an amendment which came into force after the commencement of a financial year. The facts in that case were these. The assessee''s ship lost as a result of enemy action. The Government paid the assessee in 1944 a certain amount as compensation which exceeded the original cost of the ship. The income tax Officer included the difference between the original cost and the written down value of the ship in the total income of the assessee for the assessment year 1946-47. The Tribunal upheld that decision and referred the question, whether the sum representing the difference between the original cost and the written down value was properly included in the assessee''s total income computed for the assessment year 1946-47. It was argued that the fourth proviso to s. 10(2)(vii) of the income tax Act (inserted by the Amendment Act of 1946 with effect from May 4, 1946) under which the inclusion of the amount was justified by the department, had no application to the case.

12. The learned Judges held that as it was the Finance Act of 1946 that imposed the tax for the assessment year 1946-47, the total income had to be computed in accordance with the provisions of the income tax as on April 1, 1946; that as the amendments made by the Amendments Act of 1946 with the effect from May 4, 1946 were not retrospective, they could not be taken into consideration merely because the assessee was assessed after that date; and that the assessee was not liable to pay tax on the sum because the fourth proviso s. 10(2)(vii) of the income tax Act under which it was sought to be taxed was not in force in respect of the assessment year 1946-47.

13. This Court affirmed this decision in 276586 where it was stated at p. 816 as follows :

"On the merits, the appellant had very little to say. He sought to contend that the proviso though it came into force on May 5, 1946, was really intended to operate from April 1, 1946, and he referred us to certain other enactments as supporting that inference. But we are construing the proviso. In terms, it is not retrospective, and we cannot import into its construction matters which are ad extra legis, and thereby alter its true effect."

14. In 289050 this Court held by a majority as follows :

"A legal fiction must be limited to the purposes for which it has been created and cannot be extended beyond its legitimate field. The turnover of the previous year is fictionally made the turnover of the year of assessment : it is not the actual or the real turnover of the year of assessment. By the imposition of a different tariff in the course of the year, the

incidence of tax liability may competently be altered by the Legislature, but for effectuating that alteration, the Legislature must devise machinery for enforcing it against the tax payer and if the Legislature has failed to do so, the court cannot resort to a fiction which is not prescribed by the Legislature and seek to effectuate that alteration by devising machinery not found in the statute."

15. In the instant case, there is no escape from the conclusion that the Surcharge Act not being retrospective by express intendment, or necessary implication, it cannot be made applicable from April 1, 1957, as the Act came into force from September 1, of that year.

16. The High Court has, however, relied upon a decision of this Court in 281053 where it was held as follows :

"It will be observed that we are here concerned with two datum lines : (1) the 1st of April, 1940, when the Act came into force, and (2) the 1st of April, 1939, which is the date mentioned in the amended proviso. The first question to be answered is whether these dates are to apply to the accounting year or the year of assessment. They must be held to apply to the assessment year, because in income tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied. The first datum line therefore affected only the assessment year of 1940-41, because the amendment did not come into force till the 1st of April 1940. That means that the old law applied to every assessment year up to and including the assessment year 1939-40."

17. This decision is authority for the proposition that though the subject of the charge is the income of the previous year, the law to be applied is that in force in the assessment year, unless otherwise stated or implied. The facts of the said decision are different and distinguishable and the High Court was clearly in error in applying that decision to the facts of the present case.

18. The Surcharge Act having come into force on September 1, 1957, and the said Act not being retrospective in operation, it could not be regarded as law in force at the commencement of the year of assessment 1957-58. Since the Surcharge Act was not the law in force on April 1, 1957, on surcharge could be levied under the said Act against the appellant in the assessment year 1957-58.

19. In the result, the appeal is allowed with costs.

20. Appeal allowed.