Bhagwan Dass Jain vs Union Of India (Uoi) And Ors. on 11 February, 1981

Equivalent citations: AIR1981SC907, [1981]128ITR315(SC), 1981(1)SCALE276, (1981)2SCC135, [1981]2SCR808, 1981(13)UJ169(SC), AIR 1981 SUPREME COURT 907, 1981 TAX. L. R. 664, (1981) 5 TAXMAN 7, (1981) 128 ITR 315, (1981) 21 CURTAXREP 339, 128 ITR 315, 1981 SCC (TAX) 84, 1981 UJ (SC) 169, 1981 UPTC 806, (1981) 60 TAXATION 119, 1981 (2) SCC 135

Bench: A.P. Sen, E.S. Venkataramiah

JUDGMENT

Venkataramiah, J.

1. The short question which arises for consideration in this petition for special leave to appeal filed under Article 136 of the Constitution is whether it is open to the Income-tax Officer while computing the liability of an assessee to tax under the Income-tax Act, 1961 (hereinafter referred to as 'the Act') to include in the income of the assessee any amount calculated in accordance with Section 23(2) of the Act in respect of a house in the occupation of the assessee for the purposes of his own residence. The petitioner who is an assessee under the Act contended before the High Court of Madhya Pradesh in a petition filed under Article 226 of the Constitution that inclusion of any amount under Section 23(2) of the Act in his income was unconstitutional as there could be no income at all in such a case accruing to him in the true sense of that term, the liability that was sought to be imposed under the Act in respect of his residential house was, therefore, in its pith and substance a tax on building falling under Entry 49 of List II of the Seventh Schedule to the Constitution and hence Parliament could not impose the said liability under a law made in exercise of its legislative power under Entry 82 of List I of the Seventh Schedule to the Constitution which authorised it only to levy taxes on income other than agricultural income. The High Court rejected the plea of the petitioner and dismissed the writ petition. The petitioner has now applied to this Court for special leave to appeal against the decision of the High Court.

2. When the petition came up for hearing on February 5, 1981 before us, we did not find that there was any ground to grant special leave to appeal but since the case was argued with some persistence, we decided to give reasons for rejecting the prayer of the petitioner which we proceed to give hereunder :

> Section 4 of the Act lays down that where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the

provisions of the Act in respect of the total income of the previous year or previous years, as the case may be, of every person. Section 14 of the Act mentions 'income from house property' as one of the heads of income liable to charge. Sections 22 to 27 of the Act relate specifically to the levy and computation of tax on income from house property. Section 22 provides that the annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "income from house property". Section 23(2)(i) of the Act states that where the property consists of a house in the occupation of the owner for the purposes of his own residence, the annual value of such house shall first be determined in the same manner as if the property had been let and further be reduced by one-half of the amount so determined or one thousand and eight hundred rupees, whichever is less. Section 23(2)(ii) of the Act provides that where the property consists of more than one house in the occupation of the owner for the purposes of his own residence, the provisions of Clause (i) of Section 23(2) shall apply only in respect of one of such houses, which the assessee may, at his option, specify in that behalf. There are some other ancillary and incidental provisions in the Act dealing with the computation of the annual value of such property with which we are not concerned in the present petition.

3. The argument urged on behalf of the petitioner is that as the petitioner is not deriving any monetary benefit by residing in his own house, no tax can be levied on him on the ground that he is deriving income from that house. It is contended that the word 'income' only means realisation of monetary benefit and that in the absence of any such realisation by the assessee, the inclusion of any amount by way of notional income under Section 23(2) of the Act in the chargeable income was impermissible, as it was outside the scope of Entry 82 of List I of the Seventh Schedule to the Constitution.

4. Entry 82 of List I of the Seventh Schedule to the Constitution empowers Parliament to levy 'taxes on income other than agricultural income'. Now it is well-settled that the entries in the list in the Seventh Schedule to the Constitution should not be read in a narrow or restricted sense and each and every subject mentioned in the entries should be read as including within its scope all ancillary and subsidiary matters which can fairly and reasonably be comprehended in it Words in the Constitution conferring legislative power should receive a liberal construction and should be interpreted in their widest amplitude.

5. The expression 'income' according to Oxford Dictionary means 'a thing that comes in'. Income may also be defined as the gain derived from land, capital or labour or any two or more of them.

6. In Resch v. The Federal Commissioner of Taxation 66 C.L.R. 198 at p. 224 Dixon, J. of the High Court of Australia observed :

> The subject of the income tax has not been regarded as income in the restricted sense which contrasts gains of the nature of income with capital gains, or actual receipts with increases of assets or wealth. The subject has rather been regarded as the substantial gains of persons or enterprises considered over intervals of time and ascertained or estimated by standards appearing sufficiently just, but nevertheless practical and sometimes concerned with avoidance or evasion more than with accuracy or precision of estimation. To include the annual value of the taxpayer's residence owned by himself or used rent free and to fix it at five percent of the capital value has not been considered to introduce a new subject [Hardinge's Case (1917) 23 C.L.R. 119]. To treat part of the undistributed profits earned during the current year as part of the assessable income of the shareholder imports no new subject [Cornell's case (1920) 29 C.L.R. 39 cf. Kellow-Falkiner Pty. Ltd. v. Federal Commissioner of Taxation (1928) 34 A.L.R. 276], nor does it to substitute, in the case of a foreign-controlled business, for taxable income ordinarily calculated a percentage of gross receipts fixed by the discretionary judgment of the Commissioner [British Imperial Oil Cases (1925) 35 C.L.R. 422; (1926) 38 C.L.R. 153].
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> (emphasis supplied)

7. In Simon's Income Tax (Second Edition) Volume I, page 502 dealing with the question of computation of income under Schedule 'A' to the English Income-tax Act, which related to tax on the income attributable to property, it is stated as follows :-

> It is now clear however, that (1) income tax is but one tax imposed by the Income Tax Acts;
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> (2) income tax is a tax upon income; and (3) Sched. A is but one of five Schedules which provide varying methods of estimating the measure of that income from different sources for the purposes of charge to tax.

The theory behind Sched. A is that the possession of an interest in property gives rise to income, a theory which is not always borne out in fact. That there may be no income in fact is disregarded when the assessment is made. The actual or hypothetical income has to be measured by some standard for the purposes of taxation and the standard prescribed is the annual value. This principle has been subject to adverse comment, but once the theory is appreciated, the method may be understood and any confusion of thought, created by the words of the charging section, dispelled. The use to which land is put does not (apart from the excepted concerns mentioned in the proviso to para. 1 of Sched. A above) prevent it from being assessed under Sched. A; but if a trade which is not one of those excepted concerns is carried on property which is owned by the trader and is assessed under Sched. A, an allowance for the annual value is made in computing the profits of the trade.

(emphasis supplied)

8. In the Governors of the Rotunda Hospital, Dublin v. Coman 7 T.C. 517 at 586-587 which was a case arising from Ireland, Lord Atkinson observed thus :

> It would, I think, be well to bear in mind that, to use Lord Macnaghten's words in his celebrated judgment in the London County Council v. The Attorney General (4 T.C. 265) (1901 A.C. 35), "Income Tax.... "is a tax on income". When the amount of the income to be taxed under the Act of 1842 and the Acts amending it comes to be measured, different standards are selected, and the words "profits or gains" are used in reference to all the Schedules in the Act of 1842 to describe the income, the subject of charge. The standard selected as a measure of the amount of the income to be taxed under Schedule A in respect of lands, tenements, hereditaments and heritages capable of occupation is the annual value. If the owner of such properties as these should be himself in occupation of them, it by no means follows that he will, in fact, derive from them an income equal to this annual value; but, as he has the use and enjoyment of the properties, it is, for the purposes of the Statute, presumed that he does derive from them an income equal in amount to this annual value, and the tax is accordingly, under Schedule A, assessed upon this presumed income.
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> (emphasis supplied).

9. In Navinchandra Mafatlal v. The Commissioner of Income-tax, Bombay City [1955] S.C.R. 829 while justifying the levy of income tax on capital gains under Section 12-B of the Indian Income-tax Act, 1922 enacted by the Central Legislature in exercise of the power conferred under Entry No. 54 of List I of the Seventh Schedule to the Government of India Act, 1935 corresponding to Entry 82 of List [of the Seventh Schedule to the Constitution, Das, J. (as he then was) having observed at page 837 thus:

> What, then, is the ordinary, natural and grammatical meaning of the word "income"? According to the dictionary it means "a thing that comes in". (See Oxford Dictionary, Vol. V, page 162; Stroud, Vol. II, pages 14(16). In the United States of America and in Australia both of which also are English speaking countries the word "income" is understood in a wide sense so as to include a capital gain. Reference may be made to Eisner v. Macomber (1920) 252 U.S. 189; 64 L.Ed. 521, Merchants' Loan and Trust Co. v. Smietanka (1925) 255 U.S. 509; 65 L.Ed. 751, and United States v. Stewart (1940) 311 U.S. 60; 85 L. Ed. 40, and Resch. v. Federal Commissioner of Taxation (1942) 66 C.L.R. 198. In each of these cases very wide meaning was ascribed to the word "income" as its natural meaning

10. proceeded to hold at page 838:

> As already observed, the word should be given its widest connotation in view of the fact that it occurs in a legislative head conferring legislative power.

11. In the above case this Court held that the word "income" in Entry No. 54 of List I of the Seventh Schedule to the Government of India Act, 1935 should be given a meaning wider than the connotation given to it in the English Income-tax Act, 1918 under which income attributable to property was chargeable under Schedule 'A' thereof.

12. Now coming to the specific question of the charge arising under Section 23(2) of the Act it is already seen that in Australia the annual value of the tax payer's residence owned by himself or used rent free is taken for consideration for purposes of levy of income tax. In England too in the case of a residence of the assessee, computation of income is made on the basis of presumed income. In D.M. Vakil v. Commissioner of Income-tax 14 I.T.R. 298 which was a case arising under the Indian Income-tax Act, 1922, the High Court of Bombay held that under Section 9 of that Act the tax was payable by an assessee in respect of the bona fide annual value of the property irrespective of the question whether he received that value or not. The High Court of Gujarat has also taken the same view in Sakarlal Balabhai v. Income Tax Officer, Special Investigation Circle IV, Ahmedabad and Anr. 100 I.T.R. 97.

13. There is one other circumstance which persuades us to take the view that computation of income for purposes of levy of income tax in accordance with Section 23(2) of the Act is justifiable under Entry 82 of List I of the Seventh Schedule to the Constitution. It is to be borne in mind that the Government of India Act, 1935 was enacted when the Indian Income-tax Act, 1922 was in force. Section 9 of the Indian Income-tax Act, 1922 provided for levy of income tax on the basis of the bona fide annual value of the property even when it was in the occupation of the assessee for the purposes of his own residence. While enacting entry 54 of list I of the Seventh Schedule to the Government of India Act, 1935, the British Parliament must have had in its view the Indian Income-tax Act, 1922 which was probably the only law relating to tax on incomes in force in British India then. Similarly the Constituent Assembly while enacting Entry 82 of List I of the Seventh Schedule to the Constitution must have understood that the word 'income' used in that Entry would in any event include within its scope all items which came within the definition of income and were subjected to charge in the Indian Income-tax Act, 1922 which was in force at the time the Constitution was adopted. That the Constitution makers had the Indian Income-tax Act, 1922 in their view is borne out from Article 270(1) of the Constitution which provides for collection of taxes on income by the Government of India and distribution thereof between the Union and the States, Article 366(1) which defines 'agricultural income' as agricultural income as defined for the purposes of the enactments relating to Indian Income-tax and Article 366(29) which defines 'tax on income' as including a tax in the nature of an excess profits tax. In the circumstances it would not be wrong to construe the word 'income' in Entry 82 as including all items which were taxable under the contemporaneous law relating to tax on incomes which was in force at the time when the Constitution was enacted when as observed by this Court in the case of Navinchandra Mafatlal (supra) the word 'income' in Entry 82 is capable of a wider meaning than what was given to it in the Indian Income-tax Act, 1922 or the English Act of 1918.

14. Even in its ordinary economic sense, the expression 'income' includes not merely what is received or what comes in by exploiting the use of a property but also what one saves by using it oneself. That which can be converted into income can be reasonably regarded as giving rise to

income. The tax levied under the Act is on the income (though computed in an artificial way) from house property in the above sense and not on house property. Entry 49 of List II of the Seventh Schedule to the Constitution is not, therefore, attracted. The levy in question squarely falls under Entry 82 of List I of the Seventh Schedule to the Constitution.

15. Hence we do not find any merit in the contentions urged on behalf of the petitioner.

16. For the foregoing reasons, the leave prayed for is refused and the petition is dismissed.