# L. Hazari Mal Kuthiala vs The Income-Tax Officer, Special ... on 27 September, 1960

## Equivalent citations: AIR1961SC200, [1961]41ITR12(SC), [1961]1SCR892, AIR 1961 SUPREME COURT 200, 1961 41 ITR 12, 1961 (1) SCJ 617, 1961 (1) SCR 892, ILR 1961 1 PUN J 496

## Bench: J.C. Shah, K.C. Das Gupta, M. Hidayatullah, N. Rajgopala Ayyangar, S.K. Das

JUDGMENT

Hidayatullah, J.

1. The appellant firm, L. Hazarimal Kuthiala of Kapurthala, moved the high Court of Punjab under article 226 of the Constitution for writs of prohibition, certiorari, quo warranto, etc., against the Income-tax Officer, Special Circle, Ambala, and the Commissioner of Income-tax, Punjab (1), Himachal Pradesh, Bilaspur and Simla, in respect of reassessment of the income of the firm for the account year, 1945-46. The High Court dismissed the petition, but granted a certificate under Arts. 132 and 133 of the Constitution, and this appeal has been filed on that certificate.

2. The firm carried on business as forest lessees and timber merchants at Dhilwan in the former Kapurthala State. In that State, an income-tax law was in force, and prior to the integration of the State, on April 10, 1947, the income of the firm for the account year 1945-1946 (Samvat 2002) was duly assessed, and the tax was also paid. Subsequently political quahogs took place, Kapurthala integrated into what was known as Pepsu, and the Rajpramukh issued two Ordinances in Samvat 2005, by which all laws in force in Kapurthala including the income-tax law ceased to be operative from August 20, 1948. The two Ordinances instead applied laws in force in the Patiala State to the area of the new State which included Kapurthala, and the Patiala Income-tax Act, 2001, came into force. Later still, the Indian Finance Act, 1950 (26 of 1950), applied the Indian Income-tax Act to the Part B States, which had emerged as a result of political changes. Section 13 of the Indian Finance Act, 1950, repealed the income-tax laws obtaining in the area of the Part B States except for the purposes of levy, assessment and collection of income-tax and super-tax in respect of the period defined therein.

3. On March 12, 1955, the Income-tax Officer, Special Circle, Ambala, issued a notice purporting to be under section 34 of the Patiala Income-tax Act of Samvat 2001 to the appellant firm calling upon it to file a return of its income and total world income, because he had reason to believe that the income had been under-assessed previous to this, on November 4, 1953, the Commissioner of Income-tax Act, Punjab (1), Himachal Pradesh, Bilaspur and Simla, purporting to act under section

5, sub-sections (5) and (7A), of the Indian Income-tax Act, ordered that the assessment of the appellant firm would be done by the Income-tax Officer, Special Circle, Ambala, and not by the Income-tax Officer, B-Ward, Patiala, who ordinarily would be the competent authority under section 64 of the Indian Income-tax Act to assess the appellant firm. The appellant firm raised objections, but failed, and then filed the petition under Art. 226 of the Constitution, out of which the present appeal arises.

4. Numerous objections were taken in respect of the competency of the proceedings before the taxing authorities, but some of them are no longer pressed. An argument under article 14 of the Constitution has now been abandoned, though it figured at earlier stages of the present case. A second point that the reassessment cannot be made under the Patiala Income-tax Act is not in dispute, because the respondents before us states that the reassessment, if any, would have to be done in accordance with the Kapurthala law, as it existed in the assessment year (Samvat 2002). A third argument, namely, that the words of section 13 of the Indian Finance Act, 1950, did not include reassessment, has also been abandoned, in view of the decisions of this court in Lakshmana Shenoy v. Income-tax Officer, Ernakulam ([1959] S.C.R. 751), and The Income-tax officer, Bangalore v. K. N. Guruswamy ([1959] S.C.R. 785). Only one point has been pressed before us, and it is that the Income-tax Officer, Special Circle, Ambala, had on jurisdiction to issue a notice under section 34, and that only the Income-tax Officer B-Ward, Patiala, was the competent authority. Reliance is placed in this connection upon the provisions of section 64(1) of the Indian Income-tax Act, under which the locally situated income-tax Officer would have had jurisdiction in this case. The transfer of the case by the Commissioner of Income-tax by his order dated November 4, 1953, is characterised as ultra vires and incompetent, and it is this argument alone to which we need address ourselves in this appeal.

5. The Patiala Income-tax Act contained provisions almost similar to sections 5(5) and 5(7A) of the Indian Income-tax Act. Sub-section (5) differed in this that the Commissioner of Income-tax was required to consult the Minister-in-charge before taking action under that sub-section. The only substantial difference in the latter sub-section was that the explanation which was added to section 5(7A) of the Indian Income-tax Act as a result of the decision of this court in Bidi Supply Co. v. Union of India ([1956] S.C.R. 267), did not find place in the Patiala Act. The commissioner, when he transferred this case, referred not to the Patiala Income-tax Act, but to the Indian Income-tax Act, and it is contended that if the Patiala Income-tax Act was in force for purposes of reassessment, action should have been taken under that Act and not the Indian Income-tax Act. This argument, however, loses point, because the exercise of a power will be referable to jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle is well-settled. See Pitamber Vajirshet v. Dhondu Navlapa (I.L.R. 12 Bom. 486, 489).

6. The difficulty, however, does not end there. The Commissioner, in acting under section 5(5) of the Patiala Income-tax Act, was required to consult the Minister-in-charge. It is contended that the Central Board of Revenue which under the Indian Finance Act, 1950, takes the place of the Minister-in-charge was not consulted, and proof against the presumption of regularity of official acts is said to be furnished by the fact that under the Indian law no such consultation was necessary, and the Commissioner, having purported to act under the Indian law, could not have felt the need of

consultation with any higher authority. This, perhaps, is correct. If the Commissioner did not act under the Patiala law at all, which enjoined consultation with the Minister-in-charge and purported to act only under the Indian law, his mind would not be drawn to the need for consultation with the Central Board of Revenue. Even so, we do not think that the failure to consult the Central Board of Revenue renders the order of the Commissioner ineffective. The provision about consultation must be treated as directory, on the principles accepted by this court in State of U. P. v. Manbodhan Lal Srivastava ([1958] S.C.R. 533), and K. S. Srinivasan v. Union of India ([1958] S.C.R. 1295, 1321). In the former case, this court dealt with the provisions of article 320(3)(c) of the Constitution, under which consultation with the Union Public Service Commission was necessary. This Court relied upon the decision of the Privy Council in Montreal Street Railway Company v. Normandin (L.R. 1917 A.C. 170), where it was observed as follows :

> " ... The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th edition, page 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

7. The principal of the Privy Council case was also applied by the Federal Court in Biswanath Khemka v. King Emperor ([1945] F.C.R. 99), and there, as pointed out by this court, the words of the provision were even more emphatic and of a prohibitory character. The presence of the rule is that where consultation has to be made during the performance of a public duty and an omission to do so occurs, the action cannot be regarded as altogether void, and the direction for consultation may be treated as directory and its neglect, as of no consequence to the result. In view of what has been said in these cases, the failure to consult the Central Board of Revenue does not destroy the effectiveness of the order passed by the Commissioner, however wrong it might be from the administrative point of view. The power which the Commissioner had, was entrusted to him, and there was only a duty to consult the Central Board of Revenue. The failure to conform to the duty did not rob the Commissioner of the power which he exercised, and the exercise of the power cannot, therefore, by questioned by the assessee on the ground of failure to consult the Central Board of Revenue, provision regarding which must be regarded as laying down administrative control and as being directory.

8. Learned counsel, however, contends that even if all this be decided against him, he is still entitled to show that the transfer of the case can only take place under sub-section (7A) of section 5 and not under sub-section (5). According to him, the former sub-section deals with the transfer of individual cases, and that inasmuch as there was no pending case at the time, then, as was ruled by this court in the Bidi Supply case ([1956] S.C.R. 267), the transfer could not be valid. In the absence of an

explanation similar to the one added to the Indian Income-tax Act, he contends that a case which was not pending, could not be transferred under sub-section (7A). He contends also that sub-section (5) deals not with the transfer of individual cases but with the distribution of work.

9. The two sub-sections of section 5 of the Patiala Income-tax Act read as follows :

> "(5) Income-tax Officers shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Commissioner of Income-tax may in consultation with the Minister Incharge direct, and, where such directions have assigned to two or more Income-tax Officers, the same persons or classes of persons or the same incomes or classes of income or the same area, in accordance with any orders which the Commissioner of Income-tax may in consultation with the Minister Incharge make for the distribution and allocation of work to be performed. The Minister Incharge may, with the previous approval of the Ijlas-i-Khas, by general or special order in writing, direct that the powers conferred on the Income-tax Officer by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Commissioner, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules make hereunder to the Income-tax Officer shall be deemed to be references to the Commissioner.
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> (7A) The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Minister Incharge may transfer any cases from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred."

10. There can be no doubt that sub-section (7A) authorises the Commissioner to transfer individual cases. The words "any case from one Income-tax Officer subordinate to him to another," "such transfer may be made at any stage of the proceedings," etc., clearly indicate this. Sub-section (7A) is, however, not applicable here, because in respect of the cognate sub-section of the Indian Income-tax Act it was ruled by this court that it could apply to a pending case only. It was to overcome this lacuna that the Explanation was added by the Indian Parliament. The amendment came in 1956, and the Patiala Act did not include a similar Explanation, because prior to 1956 the question had nor arisen. There is one other difference between the Patiala Act and the Indian Act. Whereas sub-section (7A) was introduced in the Indian Act by an amendment, the corresponding sub-section was enacted at the same time as the rest of the Patiala Act.

11. Now, it is quite clear that a case which was not pending at the time of transfer could not be transferred under sub-section (7A) of section 5 of the Patiala Act. The same reasoning must be applied to that sub-section, as it was applied to the Indian Act. Learned counsel referred us to an affidavit by the Under Secretary, Central Board of Revenue, reproduced in Pannalal Binjraj v. Union of India ([1957] S.C.R. 233, 246), which stated the reason for the in production of sub-section (7A). It is a little difficult to accept the affidavit as an aid to find out the intention why a particular law or

amendment was enacted, more so where the affidavit concerns quite another Act of a difference Legislature. It is, however, pertinent to remember that sub-section (7A) expressly gave the power to transfer pending cases, but said nothing about cases which were not pending. The power to transfer such cases before they came into being must, therefore, be found in some other enactment. The Department contends that it would fall within sub-section (5) of section 5, and points out that this court was not required to consider that sub-section, because the transfer of the cases dealt with in the Bidi Supply case ([1956] S.C.R. 267), was by an authority not named in sub-section (5) and, therefore, the transfer in those instances could not be held to be under that sub-section. The Department contends that the Commissioner of Income-tax is mentioned both in sub-section (5) and sub-section (7A) and could derive his power from one or the other or both.

12. The short question thus is whether an individual case which was not a pending case could be transferred from one Income-tax Officer to another under sub-section (5) of section 5 of the Patiala Act, which was kept alive for assessment and reassessments relating to previous assessment years. Mr. Palkhivala argues that the words of the sub-section "such persons or classes of persons or of such incomes or classes of income or in respect of such areas" denote, by the plural employed, a dealing with a group rather than an individual case. He further contends that if individual cases were held to be included in sub-section (5), then sub-section (7A) would be unnecessary and otiose. He argues that harmonious construction thus requires that the two sub-sections must be taken to cover difference situations.

13. The last argument is hardly open after the decision of this court adverted to already. If pending cases alone were within sub-section (7A), those cases which were not pending could not be said to have been provided for, there. There is thus no overlapping at least in so far as cases not pending were concerned. An arrangement for their disposal would be a subject of distribution of work and nothing much turns upon the employment of the plural number, because the plural includes the singular. Indeed, a single case might well be in a class separate from others. Duplication of powers is sometimes noticeable in statutes, and does not destroy the effectiveness of the powers conferred. Section 24 of the Civil Procedure Code dealing with transfers of cases and the provisions of the Letters Patent of the High Court are instances in point. If a particular action is valid under one section, it cannot be rendered invalid because the identical action can also he taken under another section, and it makes on difference if the two empowering provisions are in the same statute. In any event, sub-section (7A) would cut down sub-section (5) only to the extent the former provides, and it has been held that it was confined to pending cases only. Sub-section (5) was thus available for cases which were not pending, and the case which was the subject-matter of the Commissioner's order was not a pending case.

14. Mr. Palkhivala contends that sub-section (5) merely enables distribution of work, and does not deal with transfers. But where a case is not pending, an order relating to it may take the form of transfer or an arrangement for its disposal. There is nothing to prevent the Commissioner, acting under sub-section (5), to arrange that the case of an assessee shall be disposed of by a particular Income-tax Officer. The words of sub-section (5) that "Income-tax Officers shall perform their functions in respect of such persons ... as the Commissioner .... may ... direct" only show that the Commissioner may direct that one Income-tax Officer shall not, and another Income-tax Officer

shall, perform the functions in respect of such and such person or persons. The plural including the singular, the order of the Commissioner was valid, because he arranged and distributed work, and did not seek to transfer any case. It is, however, contended that this renders sub-section (7A) otiose. In our opinion, it does not. Special provision for transfer of pending cases is all that is provided there, and if such a transfer takes place, the provisions of sub-section (7A) will be invoked. Those provisions are to be read as not prejudicing the general powers granted by sub-section (5) and vice versa.

15. For these reasons, the appeal fails, and will be dismissed with costs.

16. Appeal dismissed.