

State Of Punjab & Anr vs Prem Sukhdas & Ors on 1 April, 1977

Equivalent citations: 1977 AIR 1640, 1977 SCR (3) 408, AIR 1977 SUPREME COURT 1640, 1977 2 SCC 774, 1977 TAX. L. R. 2045, 1977 2 SCWR 53, 1977 SCC (TAX) 344, 1977 3 SCR 408, 1977 2 SCJ 274, (1977) 2 S C R 408, 1977 U J (SC) 281, 1978 (10) LAWYER 5

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.C. Gupta, P.S. Kailasam

PETITIONER:
STATE OF PUNJAB & ANR.

Vs.

RESPONDENT:
PREM SUKHDAS & ORS.

DATE OF JUDGMENT 01/04/1977

BENCH:
BEG, M. HAMEEDULLAH (CJ)
BENCH:
BEG, M. HAMEEDULLAH (CJ)
GUPTA, A.C.
KAILASAM, P.S.

CITATION:
1977 AIR 1640 1977 SCR (3) 408
1977 SCC (2) 774
CITATOR INFO :
F 1989 SC1024 (12)

ACT:
Punjab Professions, Trades, Callings & Employments
Taxation Act, 1956-SS. 2(b) and 3--Scope of.

HEADNOTE:
Section 3 of the Punjab Professions, Trades, Callings and Employments Act, 1956, imposes a tax in respect of a profession, trade, calling or employment carried on or followed within the State. Section 5 lays down the manner of determination of tax on the gross income. The term "total gross income" is defined by the Act as "aggregate gross income derived from various professions,

trades, callings and employments". The words "whether such profession or calling is followed, trade is carried on or employment within or outside the State" were added to the section by an amendment of 1962.

Before the amendment²(b), the High Court had taken the view that in determining the aggregate gross income, only the income derived within the State by a calling, occupation, trade or profession must be taken into account for the purposes of taxation.

On the question whether the Act restricts taxation of income made within the State. Allowing the State's appeal and remitting the case to the High Court

HELD: By reading the provisions of ss.52 and together, it is clear that the determination in accordance with the scale laid down in the Schedule, of the aggregate gross income on which tax is assessed, will have to take into account the income of the individual concerned earned both inside and outside the State. [409 G]

1 (a) The High Court has clearly erred in interpreting s. 3 in such a manner as to ~~take~~ read with s. 5 of the Act, useless in determining the tax in accordance with the gradation laid down in the Schedule to the Act. This amounts nothing short of legislation. [410 E-F]

(b) The only condition for making a person taxable under the Act is that he must also have some profession, trade, calling or occupation which is to be taxed, which he carries on within the State. It does not matter whether the person is employed or carries on the same or other profession, trade, or calling outside the State. Section 3 is only meant to indicate that the person who is to be made liable had carried on some profession, calling, trade, or occupation within the State and it has nothing to do with the calculation of the aggregate amount of the tax to be levied. That is dealt with by s. 5 read ~~with~~ as amended. In determining the amount of tax, the amount an assessee makes outside must also be added to what he makes inside the State. His total gross income determines only his grade or amount of tax he has to pay. His subjection to a profession or calling tax depends only on the fact that he carries on some business or has some trade or calling within the State. [410- A-C]

2. The principle that where a provision 'is capable of one of two interpretations, the interpretation which validates rather the one which may invalidate a provision applies only where two views are possible. It cannot be pushed so far as to alter the meaning of the clear words used in an enactment and to repeal statutory provisions by making them useless without holding them to be void. [410 F]

[The case was remanded to the High Court for deciding the validity of the amendment ~~made~~ of the Act]

409

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2152- 2153 of 1968 (From the Judgments and Orders dated the 25.2.1966 of the Punjab and Haryana High Court in Civil Writ Nos. 2588 and 2392/ 1964) V.C. Mahajan for the appellants (in CA 2152). K.S. Surt and O.P. Sharma, for the appellants (in CA 1755) E.C. Agrawala, for respondent in CA 1754 Hardev Singh and R.S. Sodhi, for respondent in CA 1755 R.K. Mathur and V. Goswami, for respondent in CA 1497 N.N. Goswami and A. Minocha, for respondent in CA 2153.

The Judgment of the Court was delivered by BEG, C.J.--The only question decided by the High Court of Punjab & Haryana in the cases now before us by special leave was whether section 3 of the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956 (herein- after referred to as 'the Act') restricts taxation upon persons in Punjab to the income made within the State of Punjab. This section reads as follows :--

"3. Levy of tax--Every person who carried on trade either by himself or by an agent or representative, or who follows a profession or calling, or who is in employment, either wholly or in part, within the State of Punjab, shall be liable to pay for each financial year or a part thereof a tax in respect of such profession, trade, calling or employment:

Provided that for the purpose of this section a person on leave shall be deemed to be a person in employment".

Section 4 of the Act provides for taxation in accordance with a schedule annexed to it. Section 5 lays down the manner of determination of the tax which is to be assessed on the total "gross income". The term "total gross income"

is defined by s. 2 of the Act as "aggregate gross income derived from various professions, trades, callings and employment". The Legislature amended this provision by adding in 1962, "Whether such profession or calling is followed, trade is carried on or employment is, within or outside the State of Punjab" to the definition. The annexed schedule, conformably with the provisions of Article 276 of the Constitution does not tax any person, under the scale laid down in the schedule, to an extent more than Rs. 250/- per annum. Nevertheless, it is clear, by reading the provisions of s. 5 and s. 2 together, that the determination in accordance with the scale laid down in this schedule of the aggregate gross income on which tax is assessed, will have to take into account the income of the individual concerned earned both inside and outside Punjab.

The result is that the only condition for making a person taxable under the Act is that he must also have some profession, trade, calling or occupation which is to be taxed, which he carries on within the State of Punjab. It does not matter whether that

person is employed or carries on the same or some other profession trade, or calling outside Punjab also.- Section 3 is only meant to indicate that the person who is to be made liable has carried on some profession, calling, trade, or occupation within Punjab. It does nothing more. It has nothing to do with the calculation of the aggregate amount of the tax to be levied. That is dealt with by s. 5 read with s. 2 (b) of the Act as amended. And, in determining the amount of tax which an assessee has to pay or the grade in which he falls, the amount he makes outside must also be added to what he makes inside Punjab. His total gross income determines only his grade or amount of tax he has to pay. His subjection to a profession or calling tax depends only On the fact that he carries on some business. or has some trade or calling "within the State of Punjab".

The words qualifying the whole or a part of the calling which determines only the taxability of the person cannot possibly, on the language used, fix also the grade of taxation in which the individual falls.

We, however, find that the Punjab High Court, in accordance with a view it had been consistently taking even before the amendment of s. 2(b) of the Act, has held that, in determining the aggregate gross income, only the income made within Punjab by the calling, occupation, trade, or profession carried on must be taken into account. We think that this view of the Punjab High Court is based on a very forced interpretation given to the; clear words of s. 3 of the Act, probably because it thought it necessary to do so to make the effect of the section correspond to provisions of Article 245(1) of the Constitution. We think that the Punjab High Court has clearly erred in interpreting s. 3 in such a way as to make s. 2(b), read with s. 5 of the Act, useless in determining the tax in accordance with the gradation laid down in the schedule 2 of the Act. This amounts to nothing short of legislation. We think that the view is an impossible one. The principle that, where a provision is capable of one of two interpretations, the interpretation which validates rather than one which may invalidate a provision applies only where two views are possible. It cannot be pushed so far as to alter the meanings of the clear words used in an enactment and to., in effect, repeal statutory provisions by making them useless without holding them to be void.

It is true that the question of the validity of the provisions of the Act on the ground that they contravene Article 245 (1) of the Constitution was also raised in the High Court, but, the High Court left this question open as it held in favour of the assessee on the first question. As the first question was decided by clearly misinterpreting the provisions of the Act as they stand, we have to allow these appeals. A Division Bench of the High Court, in the judgment under, appeal, had purported to follow an earlier Division Bench decision of the High Court in *Beli Ram v. The Assessing Authority*(1), which had interpreted the provisions of s. 3 of the Act as the Act stood before the amendment of s. 2 in the manner indicated above. As the High (1) 1960 P.L.R. 846.

Court had not decided the question of validity of the amendment these cases cannot be disposed of without deciding that question. We do not propose to express any opinion on this question as we do not have the benefit of the High Court's views on it.

In the circumstances mentioned above, we set aside the judgments and orders of the High Court on these cases. We send the cases back to the High Court for deciding the question of validity of the amendment to s. 2 of the Act. The parties will bear their own costs.

P.B.R.

Appeals allowed.