

PETITIONER:

R. S. A. C. KASI IYER

Vs.

RESPONDENT:

THE COMMISSIONER OF INCOME-TAX, MYSORE, TRAVANCORE-COCHIN

DATE OF JUDGMENT:

01/09/1960

BENCH:

SHAH, J.C.

BENCH:

SHAH, J.C.

DAS, S.K.

HIDAYATULLAH, M.

GUPTA, K.C. DAS

AYYANGAR, N. RAJAGOPALA

CITATION:

1961 AIR 210

1961 SCR (1) 466

ACT:

Income-tax-Merger of Travancore-Cochin State with Indian Union-Government of India's power to direct assessment or reassessment proceedings Travancore Income-tax Regulation VIII of 1096 M. E.-Travancore Taxation on income (Investigation Commission) Act, 1124 M. E. s. 8, sub-ss. (2), (4), (5), (6)-Opium and Revenue Laws (Extension of Application) Act (33 of 1950), SS. 2, 3, 3(c).

HEADNOTE:

The State of Travancore-Cochin merged with Indian Union on March 7, 1949, but the Travancore Income-tax Regulation, VIII of 1096 (Malayalam Era) and the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Malayalam Era), continued to apply to that area notwithstanding the merger. On August 6, 1949, the Travancore-Cochin Government passed an order referring the case of the appellants to the commission constituted under the 'Travancore Taxation on Income (Investigation Commission) Act, 1124- M. E. The investigation commission held by its report that the appellants had made a secret profit in the accounting year 1118 M. E., which was not included in the income-tax return submitted by the appellants earlier. The Travancore-Cochin Government accepted the report and directed recovery of the tax due by its order dated February 14, 1950. The Income-tax Officer without holding any fresh assessment proceedings, issued a demand notice.

The Union Legislature enacted the Opium and Revenue Laws (Extension of Application) Act (33 of 1950) providing for extension of certain opium and revenue laws to certain parts of India. In exercise of the authority under s. 8(2) of the said Travancore Investigation Act, read with S. 3, cl. (c), of the Opium and Revenue Laws (Extension of Application) Act, the Government of India, on October 25, 1951, directed that appropriate assessment proceedings under the Travancore Income-tax Act be taken against the appellants with a view to assess or reassess the concealed income which had escaped assessment. The Commissioner of Income-tax withdrew the earlier notice of demand and thereafter the Income-tax

Officer after reassessment proceedings directed the appellants to pay income-tax and super-tax on the concealed income.

The said orders of the Government of India and of the

467

Income-tax Officer were questioned by the appellants and the matter was referred by the Commissioner of Income-tax to the High Court. The High Court held that the orders in question were valid orders. The appellant appealed with special leave.

Held, that the Government of India had the powers under s. 3(c) of the Opium and Revenue Laws (Extension of Application) Act, 1950, to direct proceedings for assessment or reassessment under the Travancore Income-tax Regulation after consideration of the report made by the Travancore Investigation Commission.

The order passed by the Government of India on February 14, 1950, was not inconsistent with the order passed by the Travancore-Cochin Government. Liability to pay income-tax would arise only on an effective order of assessment. No such order having been passed by the Income-tax Officer in the instant case, there could be no doubt as to the competency of the Government of India to direct proceedings for assessment. There is nothing in s. 8(2) of the Travancore Taxation on Income (Investigation Commission) Act which states that action may be taken thereunder only once, and if an unauthorised direction is given thereunder there is nothing which prevents rectification of that order.

By sub-s. (4) of s. 8 of the Travancore Taxation on Income (Investigation Commission) Act the findings by the Investigation Commission are final in all assessment or reassessment proceedings. Section 8(2) of the Act removed the bar of limitation which arose by s. 25 of the Income-tax Act. Consequently, it was competent to the Income-tax Officer to reopen the assessment proceedings notwithstanding any lapse of time and the previous order of assessment did not operate as a bar to such re. assessment.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 304/56.

Appeal by special leave from the judgment and order dated July 19, 1954, of the former Travancore. Cochin High Court in Income-tax Reference No. 5 of 1952.

A. V. Viswanatha Sastri, R. Ganapathy Iyer and G. Gopalakrishnan, for the appellant.

K. N. Rajagopal Sastri and D. Gupta, for the respondent.

1960. September 1. The Judgment of the Court was delivered by

SHAH J.-The Commissioner of Income Tax for Mysore, Travancore Cochin and Coorg at Bangalore 60

468

referred under s. 8(5) of the Travancore Taxation on Income (Investigation Commission) Act, 1124 (Malayalam Era)-hereinafter referred to as the Investigation Act read with s. 113 of the Travancore Income Tax Regulation, 1096 (Malayalam Era)-hereinafter referred to as the Income Tax Act, the following questions to the High Court of Travancore-Cochin:

(1) Whether on the facts and in the circumstances of the case, there was any evidence before the commission to come to the conclusion to which it came in its report ?

(2) On the facts and in the circumstances of the case was the order C. No. 76 (1) I.T/51 dated 25-10-1951 of the

Government of India passed under the provisions of s. 8(2) of the Travancore Taxation on Income (Investigation Commission) Act read with s. 3 of the Opium and Revenue Laws (Extension of Application) Act of 1950, a legal and valid order ?

(3) Whether on the facts and in the circumstances of the case, the order passed by the Income Tax Officer in pursuance of the directions of the Government under s. 8(2) of the Travancore Taxation on Income (Investigation Commission) Act, 1124, was a legal and valid order?

The High Court answered the three questions in the affirmative. Against the order of the High Court answering the reference, this appeal has been preferred with special leave.

The facts which gave rise to the reference are briefly these. The appellants are a firm of merchants carrying on business in yarn in the Districts of Trivandrum, and Nagercoil in the Travancore-Cochin State. For the accounting year 1118 M. E. (August 17, 1942 to August 16, 1943), the appellants submitted a return under the Income Tax Act showing a net return of Rs.4,78,5945-0 as assessable income, and they were assessed to income-tax and super tax by the Income Tax Officer on that return. In 1124 M. E., the Legislature of Travancore enacted the Investigation Act conferring authority upon the Government of Travancore to constitute a commission to be called an Income Tax Investigation Commission to investigate and, report on all matters

469

relating to taxation on income, with particular reference to the extent to which the existing law relating to, and procedure for, the assessment and collection of such taxation was inadequate to prevent evasion thereof and to investigate in accordance with the provisions of the Act in cases referred, on or before February 16, 1950, to it under s. 5. The Government was authorised after consideration of the report to direct that proceedings be taken under the various Acts including the Income Tax Act, in respect of any period commencing after August 16, 1939. By sub-s. (4) of s. 8, all assessment or reassessment proceedings taken in pursuance of the direction under sub-s. (2), the findings recorded by the Commission on the case or on the points referred to it were, subject to the provisions of sub-ss. (5) and (6) to be final. Sub-section (5) of s. 8 provided for a reference to the High Court on any question of law arising out of any order made by the Commission.

The State of Travancore-Cochin merged with the Indian Union on March 7, 1949, but the Income Tax Act and the Investigation Act continued to apply to that area notwithstanding the merger. On August 6, 1949, the Government of Travancore-Cochin passed an order referring the case of the appellants to the Commission for investigation and report under s. 5 of the Investigation Act. On the evidence led before it, the Commission held by its report dated February 1, 1950, that the appellants had in the accounting year 1118 M. E. made a secret profit of Rs. 1,31,750 which was not included in the earlier assessment. The Commission then proceeded to compute the tax payable by the appellants and found that the amount of tax payable by the appellants on their true income was Rs. 1,35,736-8-0 and that they were liable to pay that amount subject to credit for the tax, already paid, The Government of Travancore-Cochin by order dated February 14, 1950, accepted the report of the Commission and directed that

immediate steps be taken to recover, under the Income Tax Act, from the appellants the tax due according to the findings recorded by the Commission. Pursuant to this direction, the

470

Income Tax Officer, without holding any fresh assessment proceedings, issued on March 15, 1950, a demand notice under s. 42 of the Income Tax Act for the additional tax imposed on the appellants according to the findings of the Commission and called upon the appellants to pay Rs. 13,337-13-0 as additional tax. The Union Legislature enacted on April 17, 1950, the Opium and Revenue Laws (Extension of Application) Act providing for the extension of certain opium and revenue laws to certain parts of India. By s. 2 of that Act, amongst others, the Taxation on Income (Investigation Commission) Act, XXX of 1947 (enacted by the Central Legislature) and all rules and orders made thereunder which were in force immediately before the commencement of Act XXX of 1950, were extended to the rest of India except the State of Jammu and Kashmir, but by s. 3, in so far as it is material, it was provided that,

" If immediately before the commencement of this Act there is in force in any part B State other than Jammu and Kashmir any law (x x x x) corresponding to the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947); that law shall continue to remain in force. with the following modifications,

(a) all cases referred to or pending before the State Commission (by whatever name called) in respect of matters relating to taxation on income other than agricultural income, shall stand transferred to the Central Commission for disposal:

Provided .....

(b) .....

(bb).....

(c) Any reference in the State law, by whatever form of words, to the State Government or the State Commission shall, in relation to income other than agricultural income, be construed as a reference to the Central Government or the Central Commission, as the case may be;".

Purporting to exercise authority under s. 8(2) of the Investigation Act read with s. 3, cl. (c), of the Opium and Revenue Laws (Extension of Application) Act,

471

1950, the Government of India, on October 25, 1951, directed that appropriate assessment proceedings under the Income Tax Act be taken against the appellants with a view to assess or reassess the concealed income of Rs. 1,31,750 which had escaped assessment. On January 1, 1952, the Commissioner of Income Tax withdrew the notice of demand dated March 15, 1950, and thereafter the Income Tax Officer commenced reassessment proceedings against the appellants and by his order dated March 29, 1952, directed the appellants to pay income-tax and super tax on the concealed income.

At the instance of the appellants, a reference was made to the High Court of Travancore-Cochin under s. 8(5) of the Investigation Act and the three questions set out hereinbefore were referred to that court. In the view of the High Court, there was evidence on which the Commission could arrive at the conclusion recorded by it. Evidently, the High Court was incompetent, in answering the question, to enter upon a review of the evidence in exercise of its advisory jurisdiction; and Mr. Viswanatha Sastri on behalf of the appellants has fairly not attempted to challenge the answer recorded by the High Court on the first question.

The Government of India had, on a consideration of the report of the Commission, directed on October 25, 1951, that assessment proceedings be started against the appellants. Section 8(2) of the Investigation Act, in so far as it is material, reads as follows:

" After considering the report, our Government shall by order in writing direct that such proceedings as they think fit under the Travancore Income Tax Act, VIII of 1096..... shall be taken against the person to whose case the report relates in respect of the income of any period commencing after the last day of Karkadagom, 1124 (August 16, 1939) and upon such a direction being given, such proceedings may be taken and completed under the appropriate law notwithstanding the restrictions contained in s. 25 of the Travancore Income Tax Act, VIII of 1960..... and notwithstanding any lapse of time or any decision to

472

a different effect given in the case by any Income Tax authority or Income Tax Appellate Tribunal ".

By s. 3 of the Opium and Revenue Laws (Extension of Application) Act, XXXIII of 1950, the Investigation Act continued to remain in force with the modification that reference in the State law to the State Government was in relation to income other than agricultural income, to be construed as a reference to the Central Government. Whatever authority could be exercised by the Travancore-Cochin Government before the enactment of the Opium and Revenue Laws (Extension of Application) Act, 1950, could therefore, since the application of that Act, be exercised by the Central Government, and the latter Government could direct in respect of a case that proceedings for reassessment be commenced against a tax payer. The case of the appellants was referred to the Investigation Commission by the Travancore-Cochin Government and report was made to that Government by the Commission, and the authority of the Government of Travancore-Cochin to take action on the report having been conferred upon the Central Government by s. 3(c) of the Opium and Revenue Laws (Extension of Application) Act, the Central Government was *prima facie* competent to direct that proceedings under the Income Tax Act as may be justifiable be taken against the appellants. But Mr. Viswanatha Sastri appearing on behalf of the appellants contests that view on two grounds:

(1) that the Central Government may direct proceedings to be taken under the Income Tax Act only if the report was made by a commission appointed under the Taxation on Income (Investigation Commission) Act, XXX of 1947, and not on a report made by a commission appointed by the Travancore-Cochin State under the Investigation Act, and

(2) that the Travancore-Cochin Government having once taken action directing recovery of the tax due, it was not competent to the Central Government under s. 8(2) of the Investigation Act again to take any action on the report.

473

In our view, there is no force in either of these contentions. The expression " the report " in s. 8(2) refers to the report made under s. 8(1) by the members of the Commission appointed by the Travancore-Cochin Government under the Investigation Act and on a consideration of that report, the Government of India has, since the enactment of the Opium and Revenue Laws (Extension of Application) Act, 1950, power to direct that proceedings for assessment or reassessment be taken under the Income Tax Act. On the plain language used by the Legislature in s. 3(c) of the Opium and Revenue Laws (Extension of Application) Act, 1950, the

contention raised on behalf of the appellants is unsustainable.

By order dated February 14, 1950, the Government of Travancore-Cochin had accepted the report of the Commission and had directed the Board of Revenue to take necessary action for recovery of the amount of tax due from the appellants, and pursuant to that direction, without holding proceedings for assessment or reassessment, a demand notice was issued by the Income Tax Officer. The order passed by the Government of India on October 25, 1951, is not in any way inconsistent with the order dated February 14, 1950. Both the orders direct that steps be taken for recovery of the amount of income tax due from the appellants. But, if as appears evident from s. 8(4) of the Investigation Act, liability to pay income-tax could arise only on an effective order of assessment, the Income Tax Officer not having assessed the income before the demand notice was issued, the Government of India, was, in our judgment, competent to direct that proceedings be taken for assessing the liability of the appellants to pay tax consistently with the provisions of the Income Tax Act. The order passed by the Government of India on October 25, 1951, may therefore be regarded as effectuating the earlier order passed by the Travancore-Cochin Government on February 14, 1950. In any event, there is nothing in s. 8(2) which justifies the contention that action may be taken thereunder only once. If an unauthorised

474

direction is given under s. 8(2), there is nothing in that provision which prevents rectification of that order.

By sub-s. (4) of s. 8 of the Investigation Act, the findings recorded by the Commission in cases or points referred to them are made final in all assessment or reassessment proceedings. The Act has, by sub-s. (2) of s. 8 removed the bar of limitation which arose by s. 25 of the Income Tax Act. It was competent therefore to the Income Tax Officer to reopen the assessment proceedings notwithstanding any lapse of time and the previous order of assessment did not operate as a bar to such reassessment. The High Court was therefore in our judgment right in recording its answers on the three questions submitted by the Commissioner of Income Tax. In that view, the appeal fails and is dismissed with costs.

Appeal dismissed.