

PETITIONER:
THE COMMISSIONER OF INCOME-TAX

Vs.

RESPONDENT:
THE PATIALA CEMENT CO. LTD.

DATE OF JUDGMENT:
17/05/1957

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
BHAGWATI, NATWARLAL H.
DAS, S.K.

CITATION:
1957 AIR 692 1957 SCR 1161

ACT:
Income Tax-Patiala State Income-tax Law-Income-tax Officer's Orders-Appealability-Assessment years 1948-49 and 1949-50-Applicability of Indian Income-tax Act to Part B States-Patiala Income-tax Act, 2001 (VIII Of 2001), S. 18(3A) (7)-Finance Act, 1950 (XXV Of 1950), S. 13-Indian Income-tax Act, 1922 (XI Of 1922), S. 2(14A).

HEADNOTE:

The respondent was a company incorporated in the former Patiala State with its registered office in the territory of Pepsu, a Part B State. For the assessment years 1948-49 and 1949-50 in respect of the amounts of income-tax and super-tax which it failed to deduct from out of the remuneration paid to its managing agents, the Income-tax Officer took action under the provisions of s. 18 of the Patiala Income-tax Act. The Act did not provide for an appeal against the orders of the Income-tax Officer under that section and the question for determination was whether an appeal lay under the provisions of the Indian Income-tax Act, 1922, which was extended to all Part B States with effect from April 1, 1950, by s. 13 of the Finance Act, 1950, and S. 2(14A) of the Indian Income-tax Act, 1922:

Held, that the result of the extension of the Indian Income-tax Act, 1922, to Part B States was that that Act was applicable to the assessment years 1950-51 and subsequent years and that for the assessment years 1948-49 and 1949-50 the law applicable was the Patiala Income-tax Act. Accordingly, an appeal against the order of the Income-tax Officer in question was not competent.

The Union of India v. Madan Gopal Kabra, (1954) S.C.R. 541 and D. R. Madhavakrishnaiah v. The Income Tax Officer, (1954) S.C.R. 537, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 118 of 1955. Appeal from the judgment and order dated May 26, 1954, of the P.E.P.S.U. High Court in Misc. Case No. 31 of 1953. G. N. Joshi and R. H. Dhebar, for the appellant.

The respondent did not appear.

1957. May 17. The Judgment of the Court was delivered by
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KAPUR J.-This is an appeal under certificate of the Pepsu High Court and the question for decision relates to the applicability of the Indian Incometax Act, 1922, to the erstwhile Pepsu area in the years of assessment 1948-49 and 1949-50.

The assessee company (the respondent before us), was incorporated in the Patiala State and had its registered office at Surajpur in Pepsu. For the year of assessment 1948-49 the company failed to deduct from out of the remuneration paid to its managing agents, who were non-residents, the income-tax and the supertax which, it, under the law, was required to do. It also paid to its auditors auditing fees and from out of this sum also it did not deduct the income-tax and super-tax under the provisions of the Patiala Incometax Act. The two sums in dispute were Rs. 59,787-1-0 and Rs. 581, 40 respectively. For the assessment year 1949-50 also the assessee company failed to make the deduction from the remuneration paid to its managing agents and the income-tax deductible was Rs. 52,484-14-0 and super-tax Rs. 21,611-6-0. The Income-tax Officer took action against the assessee company under ss. 18(3A) and 18(7) of the Patiala Income-tax Act and consequently issued two demand notices for the amounts above mentioned. Against this order of the Income-tax Officer the assessee company took an appeal to the Appellate Assistant Commissioner who reduced the amount demanded but did not decide the question whether the assessee company was bound to make the deductions or not. The assessee company then appealed to the Income-tax Appellate Tribunal and it held that under s. 18(7) of the Patiala Incometax Act no order was required to be passed by the Income-tax Officer and that no appeal lay to the Appellate Assistant Commissioner against the order under s. 18(3A) as there was no provision for it under the Patiala Income-tax Act. Before the Tribunal it was contended that at the time when the appeals were decided by the Appellate Assistant Commissioner, the Patiala Income-tax Act had ceased to be in force and therefore the appeals were sustainable under the provisions of the Indian Income-tax Act which had been

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extended to all Part B States by s. 13 of the Indian Finance Act of 1950 (XXV of 1950) but this contention was repelled and the Tribunal held that the only remedy for the assessee company was to take a revision under s. 33 of the Patiala Income-tax Act to the Commissioner. The Tribunal at the request of the assessee company referred the following three questions for the opinion of the High Court:

(1)Whether the appeals before the Appellate Assistant Commissioner fell to be decided in accordance with the provisions of the Patiala Income-tax Act or the Indian Income-tax Act ?

(2)Whether the appeals before the Appellate Tribunal fell to be decided in accordance with the provisions of the Patiala Income-tax Act or the Indian Income-tax Act ?

(3)Whether, on the assumption that the assessee company was not bound to deduct tax, its appeals before the Appellate Assistant Commissioner were competent in law ?

The High Court decided that in regard to the assessment year 1948-49, the law applicable was the Patiala Income-tax Act and therefore no appeal lay to the Appellate Assistant Commissioner but in regard to the assessment year 1949-50

the Indian law became applicable and therefore the order of the Income-tax Officer was appealable. The Revenue have come up in appeal under a certificate of the High Court and the submission is that to the assessment year 1949-50 also the Patiala Income-tax Act applied and not the Indian Income-tax Act and therefore the order of the Income-tax Officer was not appealable.

In order to resolve the controversy, reference may be made to certain provisions of the Indian Income-tax Act, 1922, and the Finance Act of 1950. Section 13 of the Finance Act provides:

S. 13 " If immediately before the 1st day of April, 1950, there is in force in any Part B State other than Jammu and Kashmir or in Manipura, Tripura or Vindya Pradesh or in the merged territory of Cooch Behar any law relating to income tax or super tax or tax on profits of business, that law shall cease to have effect except

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for the purpose of the levy, assessment and collection of income-tax and super tax in respect of any period not included in the previous year for the purpose of assessment under the Indian Income-tax Act, 1922, for the year ending on the 31st day of March, 1951, or, for any subsequent year or, as the case maybe, the levy, assessment and collection of tax on profits of business for any chargeable accounting-period ending on or before the 31st day of March, 1949 ; " Section 13 of the Finance Act of 1950 shows that the Indian Income-tax Act became applicable to the assessee's residing, in any Part B State as from the assessment years 1950-51 or the accounting year 1949-50.

The provisions of s. 2(14A) of the Indian Income-tax Act, 1922, show that the Act became applicable to Part B States as from April 1, 1950. The relevant provisions of this section are:

S.2(14A) " taxable territories " means (d) as respects any period after the 31st day of March, 1950, and before the 13th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir and the Patiala and East Punjab States Union.

Provided that the " taxable territories " shall be deemed to include-

(b) the whole of the territory of India excluding the State of Jammu and Kashmir-

(i).....

(ii) as respects any period after the 31st day of March, 1950, for any of the purposes of this Act and

(iii) as respects any period included in the previous year for the purpose of making any assessment of the year ending on the 31st day of March, 1951, or for any subsequent year;

It will be noticed that the language used in s. 2(14A) proviso (b) (iii) is the same as the language under s. 13 of the Finance Act of 1950. The effect of the Finance Act of 1950 is that as regards assessment for the year ending March 31, 1951, the Indian Income-tax Act

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would be applicable-accounting year being the year ending March 31, 1950, and for any assessment year previous to that the Patiala Income-tax Act would be applicable. The effect of s. 2(14A) proviso (b) (ii) & (iii) is that taxable territories would comprise the whole of India excluding the State of Jammu and Kashmir as respects any period included in the previous year for the purpose of making an assessment for the year ending March 31, 1951, i.e., for the assessment year 1950-51 or the accounting year 1949-50.

The application of the Indian Income-tax Act as a result of s. 13 of the Finance Act of 1950 was decided in The Union of India V. Madan Gopal Kabra (1) which was a case from Rajasthan where there was no income-tax in the previous year but the assessee was sought to be assessed for the year 1950-51 under the Indian Income-tax Act. It was held 'that under sub-cl. (1) of cl. (b) of the proviso to s. 2(14A) the whole of the territory of India including Rajasthan would be deemed "taxable territory" for the purpose of s. 4A of the Indian Income-tax Act "as respects any period" meaning any period before or after March-31, 1950, and the assessee was therefore' liable to income-tax. Patanjali Sastri, C.J., who delivered the judgment of the court said:

"A close reading of that provision will show that it saves the operation of the State law only in respect of 1948-49 or - any earlier period which is the period not included in the previous year (1949-50) for the purposes of assessment for the year 1950-51. In other words, there remained no State-law of income-tax in operation, in any Part B State in the year 1949-50." This passage from the judgment supports the contention of the appellant that as regards income of the accounting year 1949-50 or the year of assessment 1950-51 no State law of income-tax was operative in any Part B State. It appears that the error which has crept in the judgment of the High Court has been due to misreading the year 1949-50 as being assessment year and not accounting year. In another case D. B. Madhavakri shnaiah v. The Income Tax Officer (1)

(1) [1954] S.C.R. 541, 552. (2) [1954] S.C.R. 537.

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s. 13 of the Finance Act of 1950 was similarly interpreted. Therefore both for the assessment years 1948-49 and 1949-50 the law applicable would be the Patiala Income-tax law and not the Indian Income-tax Act and consequently no appeal against the order of the 'Income-tax Officer was competent.

The answers to the questions would be as follows: Questions Nos. 1 & 2: The Patiala Income-tax Act was in operation and no appeals lay. Question No. 3 In the negative.

The appeal is, therefore, allowed but as the respondent I company has not appeared and contested the appeal, there will be no order as to costs, in this court.

Appeal allowed.

APPENDIX

Reference to the memory of Shri N. Chandrasekhara Aiyar, Ex-Judge of the Supreme Court of India, by the Judges and members of the Bar of the Supreme Court of India, assembled at a meeting on April 1, 1957.

Shri S. R. DAS, Chief Justice of India.-Mr. Solicitor General, it is with a heavy heart that I mention to you and the members of the Bar the passing away of Nagapudi Chandrasekhara Aiyar, who was an esteemed colleague and a very dear friend. The melancholy news reached me yesterday evening.

Nagapudi Chandrasekhara Aiyar was born on January 25, 1888. He was educated at Conjeevaram, Tirupati and Madras and was a student of the Christian College and the Madras Law College. During his college days he was a keen sportsman, interested chiefly in Cricket. This interest in sport he kept up even after he became a District Judge. After a brilliant academic career, he was enrolled as a vakil of the Madras High Court in 1910. He worked in the chambers of Dr. C. P. Ramaswami Aiyar whom he used to refer to as his master and for whom he had very high regard. He picked up an

extensive practice on the Original Side of the Madras High Court. In July 1927 he became the City Civil Judge and in December of the same year he was appointed as a District and Sessions Judge. He was raised to the Madras-High Court Bench in July 1941 and worked there as a Judge until January 25, 1948. The State utilised his mature experience in different spheres. He was appointed as a member of the All India Industrial Tribunal (Bank Disputes). He was later appointed as a member of the Indo-Pakistan Boundary Disputes Tribunal. Shortly thereafter he was appointed a Judge of this Court and was sworn in on September 23, 1950. Immediately after his retirement from this Court on January 24, 1953, he was chosen as the Chairman of the Delimitation Commission. Towards the end of his term in this Court he fell ill very

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seriously. He responded to medical treatment and the devoted nursing of his good wife brought him round. That illness, however, had undermined his otherwise robust health and had left him weak. But undaunted by his physical ailments and in a true spirit of service he moved about from place to place all over India and successfully completed the work of the Commission. Just at that time Chief Justice Mukherjea fell ill and on his advice Nagapudi Chandrasekhara Aiyar was called upon by the President to assist this Court as an ad hoc Judge. This burden he cheerfully accepted and efficiently discharged to the satisfaction of all concerned. Even after this he had to undertake, as Chairman, further work of delimitation consequent upon the re-organisation of the States.

Nagapudi Chandrasekhara Aiyar was well grounded in legal principles. To his legal acumen he added his deep insight into human nature and psychology and a robust common sense. On all intricate legal problems presented before the Court he brought to bear a mental freshness, which often contributed to their solution. The judgments written and delivered by him, which will be found reported in the Law Reports, will bear testimony to his legal learning and human sympathies. In his behaviour towards the members of the Bar he was always kind and considerate. Towards his colleagues he was systematically courteous.

Nagapudi Chandrasekhara Aiyar's interest in life was not confined to law or within the cloistered compound of a court of law. While he was a sound lawyer and a learned Judge, he was also a man of great erudition in Sanskrit and English literature. He was, on the one hand, the editor of the latest edition of Mayne's Hindu Law, he was, on the other hand, the author of "Anjaneya" which he had dedicated to his master and of Valmiki Ramayana. For those of us, who came into close contact with him, his ready quotations from our ancient scriptures and literary works of our classical poets were indeed a matter of joy. The Convocation addresses delivered by him were thoughtful and incisive,

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Nagapudi Chandrasekhara Aiyar above all was a warm hearted man, a man of genial temperament and a very friendly person. His bubbling cheerfulness and refreshing sense of humor inevitably dispelled dullness and he had the kindly knack of putting everybody at ease. He was a lively conversationalist, full of sparkling humor, and cheerful bon homie. Those of us, who had the privilege of coming close to him, will always miss the glow and the warmth of his kind friendliness.

The passing away of an erstwhile esteemed colleague and a

friend certainly brings to one's mind a sense of loss and sadness. We remember with gratitude the consideration, courtesy and kindness that we always received from him. We request you to convey to his companion in life our sense of admiration for the constant care and devoted attention which she daily bestowed on him and our heartfelt sympathy for her in her dark and dismal day of sorrow. We pray with her for the peace of his soul.

Shri C. K. DAPHTARY, Solicitor-General of India.-My Lord, the news of the passing away of Shri Chandra. sekhar Aiyar has come to most of us as an unexpected shock. After his miraculous and seemingly complete recovery from illness a few years ago, it was hoped that he would be spared for many years to come, to continue his distinguished services to the State. When he came to the Supreme Court Bench, he had behind him a record of work in the High Court and in other fields of public life and had won that admiration which is the just due of one who reaches the highest rung of the judicial hierarchy. When he left he had won also respect and confidence by his forthright and robust dealing with problems uncluttered by oversubtlety. He won too, affection by his hearty good-fellowship and kindness which embraced all alike, senior, junior and beginner. By his death, the law has lost a notable personality and the state a citizen of outstanding quality, who laboured in its service, and had death not snatched him away would have continued to render valuable service.

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On behalf of the Bar and myself, I associate myself with the expression of regret and the tribute to Shri Chandrasekhara Aiyar's memory which your Lordship the Chief Justice has so feelingly expressed.

Reference to the memory of late Justice' Shri P. Govinda Menon, Judge of the Supreme Court of India by the Judges and members of the Bar of the Supreme Court of India, assembled at a meeting on October 17, 1957.

Shri S. R. DAS, Chief Justice of India.-Mr. Additional Solicitor General and Mr. Vice-President of the Supreme Court Bar Association, we have met here again under the shadow of death. All of you must have read in the papers of the sudden demise of Mr. Justice P. Govinda Menon. When I was with him yesterday afternoon, I never thought that his end was so near.

P. Govinda Menon was born in September 1896. He received his early education in Ganpat High School, then in the Zamorin's College, Kozhikode, and then in the Presidency College and the Law College in Madras. He was enrolled as an Advocate in September 1920 and joined the Madras Bar and practised before the High Court. In December 1940 he was appointed Crown Prosecutor. He proceeded to Japan in April 1946 as the Indian representative before the International Military Tribunal for the Far East at Tokyo. He acted as the Chief Indian Prosecutor from April to September 1946. He was elevated to the Bench of the Madras High Court in 1947 and was there just over nine years before he was elevated to this Court in August 1956.

As a practitioner at the Bar, as Crown Prosecutor and as a Judge P. Govinda Menon acquitted himself with remarkable success. His suavity of manners and his sweet and amiable disposition endeared him to the members of the Bar and to the Judges. He had a wide circle of friends both at the Bar and outside the Bar. As a Judge of the Madras High Court he presided over almost all the divisions of the Court and had to deal with various types of cases, civil and

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criminal. His work as Crown Prosecutor brought him valuable experience and insight into human nature and helped him to acquire a firm grasp of the principles of criminal law and jurisprudence. While upholding the dignity and the majesty of the law, he had the capacity and courage of tempering justice with mercy. He did not permit mere technicalities or senseless formalities to stand in the way of dispensing justice. He also heard and disposed of heavy civil appeals and revisions. He had a deep knowledge of Hindu Law and in particular, the Marumakattayam and Aliyasantana branches of it. Indeed, the chapters on those subjects in the latest edition of Mayne's Hindu Law were written by him. He was generally helpful to the members of the Bar and in particular, to the junior section of it, who always would appear before him and make their submissions without fear or nervousness. He was a man of studious habits and took interest in literary and cultural subjects.

When he came to this Court, he brought with him his mature judicial experience and learning and his sense of justice and fairplay. My colleagues and I, who sat with him in Court, had his assistance and advice in dealing with matters coming up for decision before us. 'He was uniformly courteous to the members of the Bar as well as to his colleagues on the Bench. He was a conscientious worker, which is exemplified by the fact that although he felt definitely out of sorts for about a week before his death, he did not take rest lest the work in Court should be dislocated and his colleagues and the members of the Bar engaged in the part-heard cases should be inconvenienced. Although I assured him that all arrangements had been made for carrying on the Court work, he kept on worrying for he did not feel at ease in his mind. It was certainly a strain which, I am afraid, told upon his health. My colleagues and I, therefore, mourn the passing away of a sound lawyer, a good Judge, a loyal friend and a conscientious worker' We shall be grateful if you will convey through his son, who fortunately was at his bedside at the time of his

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death, our sincerest condolences to the members of the bereaved family.

Shri H. N. SANYAL, Additional Solicitor-General of India. My Lords, the Indian Bar most respectfully associates itself with what has fallen from Your Lordship. It expresses profound sympathy for the members of the family of Mr. Justice Menon. It expresses its deepest sorrow and grief at the sudden death of Mr. Justice Menon. In 1920, he became an Advocate of the Bar at Madras and within a short time he became one of its leading members. In 1940, he was appointed Crown Prosecutor in Madras. His name is remembered and will always be remembered that he acted with utmost fairness in conducting cases. In 1946, he went to Tokyo on behalf of India. There he discharged his duties with great ability. He became a Judge in 1947 and within a short time he made himself very popular and won the respect and admiration of the profession. Thereafter he came here as a Judge of the Supreme Court. He had been here only for a short time but in this short time he had made a tremendous impression on the members of the Indian Bar by his unfailing courtesy and his keen desire of doing justice. My Lords, Mr. Justice Menon was equipped with all the qualities which are essential for the discharge of the great judicial duties of the highest Tribunal in India. In these days, when criticisms are so often made I feel it is my duty to point out that here was a Judge who died in harness and never spared himself in spite of illness for one day and up to the

last moment when it was physically impossible for him to discharge the heavy duties of his office, he attended the Court and gave his very best for the sacred cause, that is to say, the administration of justice. On behalf of the Indian Bar, I am offering our condolence and heart-felt sympathy to the members of his family, to his friends and to everyone near and dear to him.

Shri N. C. CHATTERJEE, Vice-President, Supreme Court Bar Association.-My Lords, on behalf of the members of the Supreme Court Bar Association, it is my duty to voice the sentiments and feelings of the

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members of the Supreme Court Bar on this solemn occasion. The unexpected and sudden demise of a great and good Judge is a great loss to this Court. It is also a great loss to the State and to the Nation. The Country has been deprived by the cruel hand of death of the services of an eminent and upright Judge, who maintained a very high reputation as a Judge of one of the most important High Courts of India and also a Judge of this august Tribunal.

As members of the legal profession we look upon an independent Judiciary as a symbol of sovereignty. If there is one bulwark that guards the freedom of the average citizen, it is the Courts of Justice. We are pledged to a strict adherence of the Rule of Law and in these days, when the work of the Judiciary is not properly appreciated, it gives us some comfort to remember that there are men like Mr. Justice Govinda Menon in India who sacrificed his health and life and fell a victim to the sacred cause of Law and Justice.

Those of us who had the privilege of enjoying his friendship should remember with gratitude that he was much greater as a man. Unostentatious, gentle and kind hearted he won the affection of all who came into contact with him. I am happy to bear testimony to his kindness, sympathy and consideration for myself and for many of my colleagues of the Bar.

A few years back when I had the privilege of associating myself with an important Bar function in South India, I discovered that Mr. Justice Menon's courtesy, sweet temper and amiable disposition had endeared himself not only to his colleagues on the Bench but also to the members of the Bar. I am happy to say that he maintained the same reputation as a Judge of this Court.

The Law Reports of Madras bear eloquent testimony to his erudition, his clear mind and his keen sense of justice. Those of us, who had the privilege to appear in his Court, would bear testimony to his grasp of principles and the quiet and courteous attention he has bestowed on the cases argued before him. His

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judgments were not mere collections of precedents but he dealt with principles with clarity and precision. The highest tribute that I would like to pay to his memory today is that the juniormost member of the Bar never felt uneasy for a single moment before him.

On behalf of the Supreme Court Bar we offer our sincere condolences to the members of the bereaved family. We mourn his death and we pay our homage and tribute of appreciation and affection to the memory of this great Judge and this great gentleman.

May his soul rest in peace.