

THE COMMISSIONER OF INCOME-TAX

v.

THE PATIALA CEMENT CO. LTD.

[BHAGWATI, S. K. DAS and J. L. KAPUR JJ.]

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).

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.

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 Income-tax 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 super-tax 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 Income-tax Act. The two sums in dispute were Rs. 59,787-1-0 and Rs. 581-4-0 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 Income-tax 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

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 may be, 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 assesses 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

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. (i) 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. R. Madhavakrishnaiah v. The Income Tax Officer* (2)

(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 company has not appeared and contested the appeal, there will be no order as to costs, in this court.

Appeal allowed.
