INCOME-TAX REFERENCE.

Before Cuming and Page JJ.

EMPEROR

v.

INDU BHUSAN SARKAR.*

1926

Feb. 11.

Income-Tax—Permanently settled estates—Profits from jalkars, if assessable—Bengal Permanent Settlement Reg. (I of 1793), Arts. III, IV, VI—Income-tax Act (XI of 1922), ss. 4, 6 (vi).

The income derived from *jalkars* which were assessed under Regulation I of 1793 at the time of the Permanent Settlement, is not liable to assessment for income tax under the Income-tax Act, XI of 1922.

Chief Commissioner of Income-tax v. *Zemindar of Singampatti* (1) and *Maharajadhiraj of Darbhanga* v. *Commissioner of Income-tax* (2) followed.

Judgment of Page J. in *Emperor* v. *Probhat Chandra Barua* (3) affirmed.

THIS was a Reference by Mr. W. D. R. Prentice, M.A., I.C.S., Commissioner of Income-tax, Bengal, under section 66 (*ii*) of the Income-tax Act (XI of 1922) for the opinion of the Hon'ble High Court.

The assessee, Indu Bhusan Sarkar, a resident of Faridpur, was assessed to income-tax on his *jalkars* under section 23 (*3*) of the Income-tax Act. The assessee appealed on the ground that the income derived from the *jalkars* was taken into consideration in settling the *jama* of certain estates at the time

* Income-tax Reference No. 5 of 1925 under section 66(*2*) of the Income-tax Act.

(1) (1922) I. L. R. 45 Mad. 518.

(2) (1924) I. L. R. 3 Pat. 470; after remand (1925) C. W. N. Pa Sup. 49.

(3) (1924) I. L. R. 51 Calc. 504.

of the Permanent Settlement under Regulation I of 1793 and that any further imposition on it would be contrary to the provisions of the said Regulation. The facts fully appear from the letter of Reference which is given below :—

"At the request of the assessee I have the honour to submit herewith under section 66(2) of Income-tax Act the following questions of law for the decision of the Hon'ble High Court :—

"Is the income from the *jalkars*, which were included in the assets upon which the *jamas* of the Estates TNS 106 and 107 of the Dacca Collectorate and TN 6301 of the Faridpur Collectorate were assessed under Regulation I of 1793 at the time of the Permanent Settlement, liable to assessment to income-tax under Act XI of 1922."

"2. That facts are as follows :—Babu Indu Bhusan Sarkar an assessee of Faridpur district declared in his return filed under section 22 (2) Income-tax Act an income of Rs. 6,574 from *jalkars* and was assessed under section 23(3) on this and other sources of income. He appealed against the assessment to the Assistant Commissioner of Income-tax, Faridpur, on the ground that this income from *jalkars* arose from assets which were included in the assets taken into consideration in settling the *jama* of the three estates TNS 106 and 107 of the Dacca Collectorate and TN 6301 of the Faridpur Collectorate at the time of the Permanent Settlement under Regulation I of 1793 and that any further imposition on the same source in the shape of income-tax would be contrary to Article VI of the said Regulation. There was no claim that income from *jalkar* was agricultural income as defined in section 2 (1) Income-tax Act (XI of 1922) and exempt as such under section 4 (3) (*viii*) of the same Act. The assessee supported his claim by a reference to the decision of Dawson Miller C. J. in the case *Maharajadhiraj of Darbhanga* v *Commissioner of Income-tax* (1). The Assistant Commissioner rejected the appeal relying on the judgment of Rankin J. in the case of *Emperor* v. *Probhat Chandra Barua* (2).

"3. The assessee has now applied for a reference of this question of law to the Hon'ble High Court under section 66 (2) Income-tax (XI of 1922). I have ascertained from the Collectors of Dacca and Faridpur that the income from the *jalkars* were included in the assets upon which the *jamas* of the said estates were fixed under Regulation I of 1793. Accordingly I refer the question as stated at the commencement of this letter.

(1) (1925) C. W. N. Pat. sup. 49-53.

(2) (1924) I. L. R. 51 Calc. 504-547.

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4. Under section 66 (2) I am required to express my opinion on the "question which is referred and I would answer the question in the "affirmative, adopting the reasons given by Rankin J. in his judgment in "the case *Emperor* v. *Probhat Chandra Barua* (1).

"In that judgment of Rankin J. the remark was made that the High "Court was without any assistance in regard to the practice of the "Revenue Authorities since 1886 as regards fisheries in permanently settled "estates. A reference to the previous assessment records of this assess "shows that he has for years declared and has been assessed on incon "from fisheries; and so far as my personal experience goes (and the "enquiries I have made uniformly confirm my experience) income from "fisheries has all along been assessed to income-tax in Bengal without "objection. The claim now made that income from fisheries and from "similar items of non-agricultural income in permanently settled estates "are exempt from income-tax is a new one which so far as I can discover "has only been raised in the last two or three years and whatever the legal "position may be (and the judgment of Rankin J. appears to me to be "conclusive on the subject) there can be no doubt that the general practice "all along has been to assess income from such sources to income-tax—*vide* "Rulings 9, 10, 12 of the Bengal Board of Revenue in Appendix "IV, page 75, Bengal Income-tax Manual, 1907, which were given in 1886 "and have been followed uniformly ever since in Bengal."

Babu Rupendra Kumar Mitter (with him *Babu Dharmadas Sett*), for the applicant assessee, contended, that the income from the permanently settled estates could not be assessed. These were all *jalkar* mahals and were permanently settled. The benefit which was granted to a proprietor under the Permanent Settlement of 1793 was not repealed by the Income-tax Act of 1922 and therefore there could not be any further imposition on the same source of income. The expression "other sources" in s. 6 (*vi*) did not include the profits from such *jalkars*. He relied upon the judgment of Page J. in *Emperor* v. *Probhat Chandra Barua* (1), *Blackpool Corporation* v. *Starr Estate Co.*,

(1) (1924) I. L. R. 51 Calc. 504-547.

Ltd. (1), *Mayor of London* v. *Netherlands Steamboat Company* (2), *Chief Commissioner of Income-tax* v. *Zemindar of Singampatti* (3), *Maharajadhiraj of Darbhanga* v. *Commissioner of Income-tax* (4) and *Pole-Carew* v. *Craddock* (5).

The Advocate-General (Mr. B. L. Mitter) with him *Babu Surendra Nath Guha* and *Babu Satindra Nath Mukherjee*, for the opposite party, contended, that the income from fisheries was liable to be assessed. The intention of the Legislature was to be gathered from the different sections. Looking at the relevant sections the Government did not debar themselves from imposing revenue from all sources of income. Therefore fisheries were not necessarily excluded. It was for the assessee to show that he was to be excluded. He relied upon the judgments of Rankin J. in *Emperor* v. *Probhat Chandra Barua* (6), and Mullick J. in *Maharajadhiraj of Darbhanga* v. *Commissioner of Income-tax* (7), and Beal's Rules for Interpretation of Statutes, Part VII, 480.

Babu Rupendra Kumar Mitter, in reply.

Cur. adv. vult.

CUMING J. This is a Reference under section 66 (2) of the Income-tax Act by the Commissioner of Income-tax and the question of law referred for decision is—

Is the income from the *jalkars*, which were included in the assets upon which the *jamas* of the estate Tauzi Nos. 106 and 107 Dacca Collectorate and Tauzi No. 6301 of the Faridpur Collectorate were assessed under Regulation I of 1793 at the time of the

(1) [1922] 1 A. C. 27, 33, 34.
(2) [1905] A. C. 263.
(3) (1922) I. L. R. 45 Mad. 518.
(4) (1925) C W. N. Pat. Sup. 49.
(5) [1920] 3 K. B. 109.
(6) (1924) I. L. R. 51 Calc. 504
(7) (1924) I. L. R. 3 Pat. 470.

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Permanent Settlement, liable to assessment to income-tax under Act XI of 1922. I am of opinion that the answer must be in the negative. The sections of the Income-tax Act on which the Commissioner relies are—

Section 4 which provides that—

"Save as hereinafter provided, this Act shall apply to all income, profits "or gains, as described or comprised in Section 6, from whatever source "derived, accruing or arising, or received in British India, or deemed "under the provisions of this Act to accrue, or arise, or to be received in "British India."

Section 6 provides—

"Save as otherwise provided by this Act, the following heads of "income, profits and gains, shall be chargeable to income-tax in the "manner hereinafter appearing, namely :—

"(*i*) Salaries.

"(*ii*) Interest on securities.

"(*iii*) Property.

"(*iv*) Business.

"(*v*) Professional earnings.

"(*vi*) Other sources."

The contention of the Commissioner of Income-tax is that the profits from fisheries fall under "other sources" and that there is nothing in the Act which exempts such profits from the operation of the Act.

The assessee relies on Regulation I of 1793 (The Bengal Permanent Settlement Regulation) with special reference to articles III, IV and VI.

He argues that by this Regulation the amount of revenue payable by his estate is fixed in perpetuity; that the income from these fisheries was taken into account in assessing the amount of revenue to be paid, and hence he is paying revenue for these fisheries, and that now to assess these fisheries to income-tax is in reality to increase the amount of revenue payable by him.

He does not contend that the Legislature has not the power to do so, but he argues that the Act which

takes away a right conferred on the subject by a previous enactment must do so in clear and unequivocal language.

The Commissioner of Income-tax contends that the language of the Income-tax Act is sufficiently clear, and that by the words "other sources" so much of Regulation I of 1793 as covers the income derived from fisheries is repealed.

To discover what is the rule which should guide the Courts in determining whether the provisions of one Act are repealed or modified by a subsequent enactment it will be sufficient if I refer to the observations of three very learned Judges.

Lord Selbourne, Lord Chancellor in the case of *Mary Seward* v. *The Owner of the "Vera Cruz"* (1), remarks—

"If anything be certain it is this, that where there are general words "in a later Act capable of reasonable and sensible application without "extending them to subjects specially dealt with by earlier legislation, "you are not to hold that earlier and special legislation indirectly repealed, "altered, or derogated from merely by force of such general words, "without any indication of a particular intention."

Let us apply the rule to the present case.

We have in the Regulation of 1793 an Act which deals specially with the fixing of the revenue to be paid by permanently settled estates. The words used in the Income-tax Act are very general, viz., "other sources". The provision is obviously capable of a reasonable and sensible application without extending it to incomes derived from fisheries. They are obviously not the only income which might fall under other sources.

There is, to my mind, nothing in the words "other sources" to indicate that by these words the Legislature had the particular intention of repealing so

(1) (1884) 10 A. C. 59, 68.

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much of Regulation I of 1793 as dealt with the fixity of revenue so far as fisheries were concerned.

Lord Justice Bowen re-stated the same rule in the case *Re Curo Mansfield* v. *Mansfield* (1). In the case of *Garnett* v. *Bradley* (2), Lord Blackburn remarked—

"But where that is the case, where the particular enactment is particular in the sense that it protects the rights, the property, the privileges "of particular persons or a class of persons, the reason for the rule which "has been acted upon is exceedingly plain and strong. It would be very "unjust, or I would rather say unfair (I do not go further than that), to "pass an enactment taking away from a particular person or class of "persons his or their rights without hearing what he or they have got to "say about it; and if general words were to have the effect of taking "away the rights of a particular person or class which had been given to "them beforehand, it would be done without their having any knowledge "or opportunity of resisting it, and it is not to be imputed to the Legislature or to be supposed that the Legislature would do what was unfair."

Let us apply these observations also to the present case.

Regulation I of 1793 does certainly confer certain rights and privileges on a particular class of persons with whom these estates were settled at the time of the Permanent Settlement, enacting that the revenue which they should pay for their estates then settled with them was fixed for ever. If these rights are to be taken away by the general words "other sources of income" clearly their rights would be taken away without their having any knowledge or opportunity of resisting it.

As Lord Blackburn puts it, it is an intelligible principle that the Legislature shall not be presumed to have done anything unfair and to have taken away a privilege not having openly stated that they meant to take it away or in such open or clear language that the persons affected might come and resist and use arguments to shew why it should not be taken away.

(1) (1889) 43 Ch. D. 12, 17. (2) (1878) 3 A. C. 944, 968.

but having simply used general words quite consistent with their never having thought of the privilege at all.

It must be remembered that the Income-tax Act was passed by the Central Assembly. There are many parts of India where the Permanent Settlement d all that it implies are entirely unknown, and ere is nothing to show that the Legislature when enacting the particular Act had in mind the Permanent Settlement and deliberately took away one of the privileges conferred by the Regulation. As Lord Blackburn puts it the general words are quite consistent with the Legislature having never thought of the Permanent Settlement at all. It is difficult for me to think that the Legislature would by an indirect route alter the important and long-cherished privileges conferred by the Permanent Settlement.

I am not in any way impressed by the argument of the Commissioner of Income-tax that hitherto incomes from fisheries have been assessed to income-tax without objection. It may have been but that does not make it any more legal. Neither is there anything to shew that the incomes of these fisheries he referred to were taken into account in fixing what revenue had to be paid.

The view which I now take is the view which has commended itself to the Madras High Court: see *Chief Commissioner of Income-tax* v. *Zemindar of Singampatti* (1), and also to the Patna Hight Court: see *Maharajadhiraj of Darbhanga* v. *Commissioner of Income-tax* (2). The answer I would give to the Reference of the Commissioner of Income-tax is that the incomes of such *jalkars* as are referred to in his letter of Reference are not liable to be assessed to income-tax.

(1) (1922) I. L. R. 45 Mad. 518. (2) (1924) I. L. R. 3 Pat. 470.

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PAGE J. I agree. In the case of *Emperor* v. *Probhat Chandra Barua* (1) I had occasion to state my views on this matter, and I need not repeat them. On that occasion I had the misfortune to differ from my brother Rankin, but before that case was decided the Madras High Court in *Chief Commissioner of Income-tax* v. *Zemindar of Singampatti* (2), and since it which decided the Patna High Court in *Maharajadhiraj of Darbhanga* v. *Commissioner of Income-tax* (3) arrived at the same conclusion as that which I expressed in *Emperor* v. *Probhat Chandra Barua* (1). It is highly important that questions affecting the liability of the subject to taxation should not remain in doubt, and it is satisfactory that a Full Bench of the Madras High Court, and a Division Bench of the High Courts at Calcutta and Patna, which have been invited to express an opinion on this important matter, have each now answered the question propounded in the same sense, and are of opinion that income derived from sources such as that which is the subject matter of this Reference is not assessable to income-tax.

B. M. S.

(1) (1924) I. L. R. 51 Calc. 504. (2) (1922) I. L. R. 45 Mad. 518.
(3) (1924) I. L. R. 3 Pat. 470 ; after remand (1925) C. W. N. Pat. Sup. 49.