1964

April 22

STATE OF MADHYA PRADESH AND ORS.

v.

SIRAJUDDIN KHAN

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (M. P. Act No. 1 of 1951) Sch. I, r. 2(2)(c).

The respondent was an owner of an estate in Madhya Pradesh. Under the provisions of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 the respondent's estate was vested in the State and he became entitled to compensation. The compensation was to be paid at the rate of ten times the net income. The net income would be calculated by deducting from the gross income, *inter alia*, the average of the income tax paid in respect of the income from big forest during 30 agricultural years proceeding March 31, 1951. In calculating the net income the Compensation Officer deducted not only income tax but also super tax and the respondent appealed to the Settlement Commissioner against the deduction of super tax. On the rejection of the appeal the respondent filed a writ petition in the High Court and the High Court held that on a construction of the various provisions of the Act it was wrong to deduct the super tax while calculating the compensation payable to the respondent. The appellant filed this appeal on special leave granted by this Court.

It was contended on behalf of the appellant that the object of the r. 2(2)(c) of Schedule I to the Act is to provide a method for ascertaining the net income of an estate and therefore there cannot be any distinction between income tax and super-tax and the expression "income-tax" has been used comprehensively to include super-tax also. The contention on behalf of the respondent was that from a historical point as well as from the provisions of the Act it is seen that income tax and super-tax were distinct and separate and the former does not include the latter.

Held: (i) There are two essential differences between income-tax and super-tax. They are (1) though both the taxes are assessed on the total income of a person, the total income for the purpose of income tax is computed on the basis of income classified chargeable under the different heads mentioned in s. 6 of the Income-tax Act whereas super-tax is not concerned with the different heads, but is payable on the total income so ascertained and (2) while super-tax 1, except in a few cases, is payable by the assessee direct, the income tax is payable by him direct as well as by deduction.

(ii) Examining the provisions of r. 2(2)(c) Schedule I of the Act it is evident that with the knowledge that under the Income-tax Act two seperate duties namely income-tax and super-tax are imposed the Legislature has used the expression "income tax". If the intention was to refer to both the taxes it would have stated income-tax and super-tax. The mention of the one and the omission of the other is a sure indication of its intention. The qualification that income-tax paid should have been in respect of the income received from the big

forests necessarily excludes super-tax for under the Income-tax Act no super-tax is payable in respect of the income received from big forest but only in respect of the total income.

(iii) Having regard to the terms of r. 2(2)(c) of Schedule I to the Act it is clear that income-tax does not take in super-tax.

Case law reviewed.

Brooks v. *Commissioner of Inland Revenue*, (1914) 7 T.C. 236, *Bates. In re: Salmea* v. *Bates*, 1925 Ch. D. 157 and *Reckitt* v. *Reckitt*, (1933) 1 I.T.R. 1.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 510/1963. Appeal by special leave from the judgment and order dated January 22, 1960 of the Madhya Pradesh High Court in Misc. Petition No. 35 of 1959.

B. Sen and *I. N. Shroff*, for the appellant.

K. N. Rajagopal Sastri and *A. G. Ratnaparkhi*, for the respondent.

April 22, 1964. The judgment of the Court was delivered by

SUBBA RAO, J.—This appeal by special leave raises the question whether the expression "income-tax" in cl. (c) of sub-r. (2) of r. 2 of Schedule I to the Madhya Pradesh Abolition of Proprietary Rights (Estate, Mahals, Alienated Lands) Act, 1950 (M.P. Act No. 1 of 1951), hereinafter called the Act, includes super-tax.

The facts are as follows: The respondent was the zamindar of Bhadra Estate in Balaghat District of Madhya Pradesh. His estate was known as Bahela Zamindari consisting of 78 villages. The Act came into force on January 26, 1951. Under the Act the proprietary rights of the zamindari vested in the State and he became entitled to compensation in respect of the said rights in the said villages under s. 8 of the Act. The compensation was to be determined in accordance with the rules contained in Schedule I to the Act. Under r. 8 of Schedule I the zamindar would be entitled to compensation at 10 times the net income. The net income would be calculated by deducting from the gross income, *inter alia*, the average of the income-tax paid in respect of the income from big forest during 30 agricultural years preceding March 31, 1951. On November 30, 1951, the Compensation Officer determined the compensation payable to the respondent at Rs. 2,21,330-12-6. In arriving at that figure he deducted not only the income-tax payable by the respondent but also the super-tax and sur-charge payable by him. The average of the income-tax paid by him during the material 30 years was only Rs. 3.760-2-9, but if the average of the super-tax and sur-charge was included, the average came

Rs. 7,070-8-0. The result was that the net yearly income of the estate was reduced by Rs. 3,310-5-3 and compensation was paid to him on the basis of the amount so reduced. The respondent moved the Settlement Commissioner under s. 15 of the Act for enhancement of the compensation, but the Commissioner confirmed the order of the Compensation Officer. Thereafter, the respondent filed an application in the High Court under Arts. 226 and 227 of the Constitution for quashing the order of the Compensation Officer. The High Court held, on a construction of the relevant provisions of the Act, that super-tax should not be taken into account while calculating the compensation payable to the respondent. The State of Madhya Pradesh has filed the present appeal against the order of the High Court.

Mr. Sen, learned counsel for the State, contends that the object of r. 2(2)(c) is to provide a method for ascertaining the net income of an estate, that in that context there cannot be any justifiable distinction between income-tax and super-tax, for both of them have, *inter alia,* to be deducted from the gross income to arrive at the net income, and that the Legislature used the word "income-tax" in its comprehensive sense so as to take in super-tax. He adds that under the Income-tax Act super-tax is only an additional duty of income-tax and, therefore, a part of it.

Mr. Rajagopala Sastri, learned counsel for the respondent-assessee, argues that in construing a provision of an exproprietary Act, the Court will have to construe such a provision strictly and if so construed, super-tax cannot be included in the expression "income-tax". He took us through the relevant provisions of the Income-tax Act to support his contention that super-tax is different in its origin, description, scope, incidents and collection from the income-tax.

The question turns upon the correct interpretation of r. 2(2)(c) of the rules of Schedule I to the Act. The relevant provisions of the Act and the rule read:

> *Section* 8(1) *of the Act*: "The State Government shall pay to every proprietor, who is divested of proprietary rights, compensation determined in accordance with the rules contained in Schedule I."
>
> *Schedule I to the Act*
>
> *Rule* 2. (2). The net income of an estate or mahal in the Central Provinces shall be calculated by deducting from the gross income the sums under the following heads, namely:—
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> * * * * *
>
> (c) the average of the income-tax paid in respect of the income received from big forest during

the period of thirty agricultural years preceding the agricultural year in which the relevant date falls;

* * * * *

Rule 8. (1) The amount of compensation in the Central Provinces and in Berar shall be ten times the net income determined in accordance with the rules herein contained.

The combined effect of the said provisions is that for the purpose of ascertaining the net income of an estate one of the deductible items is the average of the income-tax paid in respect of the income received from the big forest. That average is ascertained on the basis of the income-tax paid during the 30 agricultural years preceding the agricultural year in which the relevant date falls. The compensation payable is ten times the net income ascertained under the rules. The relevant date for the purpose of ascertaining the average is the date specified by notification by the State Government under s. 3 of the Act: for instance, if the relevant date falls in the year 1951, the income-tax paid during the years 1921 to 1951 will afford the basis for arriving at the average.

To appreciate the distinction between the concepts of income-tax and super-tax a brief history of their incidents will not be inappropriate. Under the Income-tax Act of 1886 the total income from various sources was not the criterion for assessment but the different sources alone were the basis for it. For the first time the 1918 Act introduced the scheme of total income for the purpose of determining the rate of tax. Under that Act several heads were enumerated, under which the income of an assessee fell to be charged. The 1922 Act went further and enacted that loss under one head of "income" can be set off against the profit under another head. Till the 1922 Act super-tax was separately levied. It was first introduced by the Super-tax Act of 1917 and then it was replaced by the 1920 Act. Only in 1922, for the first time, it was incorporated in the Income-tax Act. Though both the taxes are dealt with by the same Act, their distinctive features are maintained. As regards income-tax, in the words of a learned author, "s. 3 charges the total income, s. 4 define its range, s. 6 qualifies it and ss. 7 to 12 quantify it." There are various other sections which provide the machinery for the ascertainment of the total income for assessment and recovery of tax. As regards super-tax, a separate chapter viz., Ch. IX, deals with it; it comprises ss. 55 to 58. Section 55 is the charging section for the purpose of super-tax; under that section, "In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the

previous year.....an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by a Central Act". Section 56 says that for the purpose of super-tax, except in specified cases, the total income shall be the total income as assessed for the purpose of income-tax. Section 56A exempts from super-tax certain dividends. Section 58(1) applies by reference to super-tax certain provisions of the Act relating to the charge, assessment, collection and recovery of income-tax. It would be seen from this Chapter that though super-tax is described as an additional duty of income-tax it is not incorporated in the income-tax; its identity is maintained. A self-contained chapter deals with the charge, assessment, collection and recovery of super-tax. There are essential differences between the two taxes emanating not only from the express provisions contained in Ch. IX but also from the omission to apply the specified sections of the Act to the said tax. Successive Finance Acts also made a distinction between the two taxes. This is not the occasion to notice in detail the differences between the two taxes. It is enough to state that there are pronounced differences between the incidents of the two taxes. But two relevant differences may be noticed, namely, (i) though both the taxes are assessed on the total income of a person, the total income for the purpose of income-tax is computed on the basis of income classified and chargeable under the different heads mentioned in s. 6 of the Act, whereas super-tax is not concerned with the different heads, but is payable on the total income so ascertained; and (ii) while super-tax, except in a few cases, is payable by the assessee direct, the income-tax is payable by him direct as well as by deduction. While in the case of income-tax by reversing the process the tax attributable to a particular source can be ascertained, in the case of super-tax no such process is possible as the said liability springs into legal existence only after the total income is ascertained. The only possible method by which the said tax may be split up is by working out the proportion of the tax payable by the assessee in respect of an income from a particular source on the basis of the ratio the said income bears to the total income. But this method is not sanctioned by the Act. It is not legally possible to predicate what particular part of the super-tax is attributable to an income from a particular source, for, unlike in the case of income-tax, total income alone is the criterion and the income from different sources is not relevant. To illustrate: super-tax is now levied on income over certain level—at present Rs. 25,000/-. If "A's" total income is Rs. 35,000/- made up of Rs. 20,000/- from big forest and Rs. 15,000/- from other sources, what is the super-tax attributable to the income from the big forest? The answer is, it is not possible to do so.

With this background let us give a close look to the provisions of r. 2(2)(c) of Schedule I to the Act. The legislative intention is manifest from the express language used and also by internal evidence. With the knowledge that under the Income-tax Act two separate duties, namely, income-tax and super-tax, are imposed, the Legislature has used the expression "income-tax". If the intention was to refer to both the taxes, it would have stated "income-tax and super-tax". The mention of the one and the omission of the other is a sure indication of its intention.

The qualification that income-tax paid should have been in respect of the income received from the big forest necessarily excludes super-tax, for under the Income-tax Act no super-tax is payable in respect of the income received from big forest, but only in respect of the total income. As we have pointed out earlier, it is not legally possible to disintegrate and allocate a portion of the super-tax to the income attributable to the big forest. It is not paid in respect of the income from the big forest, but is paid only in respect of the total income. If the contention of the appellant prevails, though the income from big forest falls below the taxable income, it will be deducted if, in combination with the income from other sources, the income goes up to the taxable level. In that event super-tax not payable in respect of the income from big forest will have to be deducted. That apart, the rules made under the Act do not provide for any machinery for allocating the super-tax payable on the total income among the different sources. It is said that the same difficulties are present even in the case of income-tax. Though income-tax is also a tax on the total income of an assessee, the Act, as we have indicated earlier, provides for computing the income under different heads and, therefore, it is not inappropriate to describe a particular tax as attributable to an income from a particular head, but it would wholly be inappropriate to describe that a part of the super-tax is payable in respect of an income from a particular source.

The argument of Mr. Rajagopala Sastri, learned counsel for the respondent, that the 30 years mentioned in the rule takes us back to a period when there was no super-tax appears to be not sound, for, as we have stated earlier, super-tax was payable in one form or other from the year 1917. That apart, if the income-tax takes in super-tax, the non-existence of super-tax in a particular year does not make any difference in ascertaining the average, for the income-tax for that year will be the income-tax without the addition of super-tax. This circumstance is not, therefore, of much relevance and we exclude it from our consideration.

The argument that if the Legislature intended not to exclude super-tax from the gross-income, it would have expressly stated so in the rule is an attempt to put the shoe on the wrong foot. The proper approach, particularly in the case of an exproprietary statute, is to ask the question why the Legislature did not expressly mention super-tax, if it intended to do so. The use of one of the two well understood expressions is, on the other hand, an indication that the Legislature provided for the deduction of the one used and not of the other omitted. The reason for the rule, if it is legitimate to speculate, appears to be that as it is concerned with the calculation of the net-income from the estate after making certain deductions, only those deductions which have a direct relation to that income are allowed. If the other construction prevails, speculation would take the place of certainty and super-tax not paid factually in respect of the income from big forest would have to be deducted. Such a construction defeats the purpose of the rule.

Some of the decisions cited at the Bar may now be noticed. Lord Sumner pithily remarks in *Brooks* v. *The Commissioner of Inland Revenue*(1):

> ".....for super-tax is another and a new tax none the less, though it is an additional duty of Income Tax."

In *Bates, In re*: *Selmes* v. *Bates*(2), a testator gave to his wife by his will "such a sum in every year as after deduction of the income tax for the time being payable in respect thereof will leave a clear sum of £ 2000." It was held that the wife was entitled to the £ 2000 free of income-tax only and was not entitled to payment of any sum in respect of super-tax. There the trustees were directed to pay the annuity after deducting the income tax in respect of that annuity. Rejecting the argument advanced on behalf of the wife that the said annuity should be free from super-tax also, Russell. J.. observed:

> "Now super-tax was not a charge in respect of any particular annuity or sum, but was a charge in respect of the recipient's whole income and was not a matter with which the trustees would be charged or concerned at all, and, in his opinion, what the testator had done was to give the widow the yearly sum of £ 2500 clear of all deductions for which the trustees were accountable, but that did not include super-tax, which she must pay herself."

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(1) (1914) 7 T.C. 236, 258.

(2) [1925] Ch. D. 157, 159-160, 161.

The learned Judge proceeded to state:

> "No super-tax is really payable 'in respect of' this sum."

It is true that the said judgment turned upon the provisions of a particular will, but the reasoning is helpful. There, income-tax was deductible in respect of the sum bequeathed, here income-tax is deductible in respect of the income received from big forest. As super-tax is not a charge in respect of the income from big forest, on the parity of reasoning it shall be held that the word "income-tax" used in cl. (c) of r. 2(2) of Schedule I to the Act excludes super-tax. In *Reckitt, In re*: *Reckitt* v. *Reckitt*(1), a fund was bequeathed to trustees upon trust for investment and to pay out of the income of the investments "the annual sum of £ 5000 free of income-tax" during the life of the annuitant. The Court of Appeal held that the annuitant was entitled to have the sum paid to her without deduction on account of super-tax and that the trustees must pay the super-tax payable in respect of that sum out of the income of the fund. The conclusion turned upon the provisions of the will. Lord Hanworth, M.R., distinguished the decision in *Bates, In re*: *Selmes* v. *Bates*(2) on the ground that Russell, J., founded his judgment upon the reference to deductions and also upon the direction to the trustees that specified sum should be paid after deduction of income-tax in respect thereof and proceeded to observe that in the case before them no reference was made to the system, or the power of the trustees to make deductions; and that it was simply that a total sum in each year was to be paid free of income-tax. That decision may be right or wrong on the construction of the will before the Court of Appeal, but the features which distinguished *Bates* case from the decision in *Reckitt's* case are also present in the case before us now. Here also the rule empowers the prescribed authority to deduct from the gross income income-tax paid in respect of the income received from big forest. The earlier decision is more in point to the present case than the later. Be that as it may, the English decisions on the construction of will are not of much help in construing the express provisions of r. 2(2)(c) of Schedule I to the Act: they shall be construed on their own terms. Having regard to the terms of the rule. we have come to the conclusion that income-tax does not take in super-tax.

In the result, the appeal fails and is dismised with costs.

Appeal dismissed.

(1) (1933) 1 I.T.R. 1.

(2) [1925] Ch. D. 157.