1961

April 14.

RANJIT SINGH

v.

THE COMMISSIONER OF INCOME-TAX, U. P. AND OTHERS.

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and T. L. VENKATARAMA AIYAR, JJ.)

Income Tax—Evasion of Taxation—Case referred to Investigation Commission—Settlement of Case—Notice of demand—Commencement of Constitution—Recovery of tax thereafter—Legality—Taxation on Income (Investigation Commission) Act, 1947 (30 of 1947), ss. 8, 8-A—Constitution of India, Art. 14.

In 1948 the Central Government referred a number of cases in which the petitioner was concerned, to the Income-tax Investigation Commission set up under the relevant provisions of the Taxation on Income (Investigation Commission) Act, 1947. After the Commission had submitted the report under s. 8-A(1) of the Act, in which the total tax payable on the undisclosed income upto March 31, 1947, was estimated, the petitioner applied for a settlement of his case by offering to pay the amount of tax in instalments and by agreeing to pay the whole amount immediately in case of default in payment of any of the instalments in time. The Central Government accepted the terms suggested by the petitioner and passed an order on November 21, 1949, under s. 8-A(2) of the Act directing the service of a demand notice on the petitioner and recovery of the tax in accordance with the terms and conditions of the settlement. On December 2, 1949, a notice of demand was issued to the petitioner who, in pursuance thereof, made certain payments. But as the petitioner was unable to make full payment within the stipulated periods, the whole amount outstanding became immediately payable and certain properties belonging to him and his family were attached by the Collector of the district concerned for the recovery of the amount. On June 8, 1959, the petitioner filed a writ petition under Art. 32 of the Constitution of India challenging the legality of the demand notice dated December 2, 1949, and the subsequent proceedings taken in pursuance of that notice on the ground that after the coming into force of the Constitution of India on January 26, 1950, they were violative of the fundamental right of equal protection of the laws guaranteed under Art. 14, inasmuch as what he had agreed to pay the Government as a result of the settlement was really a debt, and he had been dealt with differently from other debtors who owed money to the State under a contractual liability.

Held, (1) that the proceedings against the petitioner culminating in the service of the notice of demand against him were all completed before the coming into force of the Constitution and the petitioner cannot challenge those proceedings under

Art. 14 of the Constitution, because it is well settled that the Constitution is prospective and not retrospective;

(2) that the true scope and effect of sub-s. (2) of s. 8-A is to enforce the terms of any settlement arrived at in pursuance of sub-s. (1), which was really income-tax which had escaped assessment;

(3) that the petitioner belonged not to the larger class of debtors of Government but to a special class which had evaded payment of income-tax for which the procedure laid down in s. 8-A(2) was one and the same, and that the classification being reasonable having a just relation to the object of the provision, the recovery procedure cannot be challenged as discriminatory under Art. 14.

Suraj Mall Mohta and Co. v. *A. V. Visvanatha Sastri and Another*, [1955] 1 S.C.R. 448, *M. CT. Muthiah & two Others* v. *The Commissioner of Income-tax, Madras & Another*, [1955] 2 S.C.R. 1247 and *Basheshar Nath* v. *The Commissioner of Income-tax, Delhi & Rajasthan and Another*, [1959] Supp. 1 S.C.R. 528, distinguished.

ORIGINAL JURISDICTION: Writ Petition No. 85 of 1959.

Writ Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

A. V. Viswanatha Sastri, R. S. Pathak, S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the petitioner.

K. N. Rajagopala Sastri and *D. Gupta*, for respondents Nos. 1 and 2.

1961. April 14. The Judgment of the Court was delivered by

S. K. DAS, J.—One Ranjit Singh is the petitioner before us. The respondents are the Commissioner of Income-tax, Lucknow, the Income-tax Officer, Lucknow, and the Collectors of three districts in Uttar Pradesh, namely, Dehra Dun, Kanpur and Lucknow, being officers under whose orders certain properties of the petitioner and his family have been attached in pursuance of a notice of demand issued under s. 29 of the Indian Income-tax Act, 1922, in circumstances which we shall presently state. *S. K. Das J.*

The facts are shortly these. In 1948 the Central Government referred a number of cases in which the petitioner was concerned to the Income-tax Investigation Commission set up under the relevant provisions

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of the Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947), hereinafter referred to as the Act. On May 30, 1948, the Secretary of the Commission issued a notice to the petitioner to furnish a list of businesses or concerns in which the petitioner was interested and to produce the account books, registers etc. relating thereto. The petitioner complied with the notice. Then, an Authorised Official appointed by the Commission commenced an investigation into the cases in February, 1949, and in due course submitted a report to the Commission. The Commission heard the petitioner and on April 16, 1949, submitted a report under s. 8-A(1) of the Act. The findings of the Commission appear from the following extract from their report:

"The total tax payable on the undisclosed income upto March 31, 1947 would accordingly be Rs. 6,61,917.

.....

The amount of Rs. 6,61,917 may be recovered from Mr. Ranjit Singh and from the family assets in the hands of Mr. Ranjit Singh. In view of the admission recorded as number (iii) in para 6 *supra*, the tax will also be recoverable from the properties acquired between 1939 and 1947 in the names of Mrs. Ranjit Singh and Mr. Ranjit Singh's sons Baljit Singh and Satendrajit Singh. In the circumstances, we recommend that no penalty be levied on the assessee in respect of non-disclosures and false or incorrect statements so far made either to the income-tax authorities or in the course of the present proceedings (including those before the Authorised Official). Mr. Ranjit Singh and Mr. Vaidyanatha Ayyar (representative of Mr. Ranjit Singh) have asked that they be allowed sufficiently long time to pay up the tax. It has been represented that out of taxes already assessed by the Income-tax Department about Rs. 3,86,000 is still due and the addition of the amount leviable under this report will bring the assessee's total liability to about 10½ lakhs. Mr. Ranjit Singh has asked that he may be permitted to pay up this sum in not

more than five years, in instalments of not less than a lakh of rupees at a time. While we do not wish to go into the details of the offer, we recommend this request for time for favourable consideration by Government."

Then, on November 7, 1949, the petitioner, his wife and two sons submitted a petition to the Commission in which they accepted the findings of the Commission as correct and offered to pay the tax in instalments in accordance with certain terms of settlement. Some of these terms are:

"3. We offer to pay the aforesaid amount of Rs. 6,61,917 as per the following instalments:

(1) on or before the 31st March, 1951 Rs. 1,00,000.
(2) on or before the 31st March, 1952 Rs. 2,31,000.
(3) on or before the 30th June, 1952 Rs. 3,30,917.

4. We, however, pray that so far as the last instalment is concerned in case we are unable to pay the same by the date mentioned above and are able to satisfy the Central Board of Revenue that we have failed to raise the money for reasons beyond our control and for no fault of our own, a suitable extension of time may be granted.

5. In respect of the other instalments, we agree that in case of default in the payment of any one of them, the whole amount of tax outstanding at the time shall become immediately payable."

The report of the Commission and the terms suggested by the petitioner for a settlement were accepted by the Central Government and an order was passed under s. 8-A(2) of the Act on November 21, 1949, which stated in its operative part that a demand notice be served immediately by the Income-tax Officer concerned under s. 29 of the Indian Income-tax Act, 1922, on the petitioner in accordance with the terms and conditions of settlement and that all such other proceedings under the Indian Income-tax Act or under any other law as may be necessary be taken with a view to enforce the payment of the demand and terms and conditions of the settlement.

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The respondents allege that a demand notice was accordingly issued to the petitioner on December 2, 1949. The petitioner alleges, however, that he received the notice in or about April, 1950, after the Constitution of India had come into force. Thereafter, in pursuance of the demand notice certain payments were made by the petitioner. The petitioner was, however, unable to make full payment within the stipulated periods mentioned in the demand notice. The result was that according to the terms of settlement the whole amount outstanding at the time became immediately payable by the petitioner. Then, certain properties of the petitioner and his family were attached by the Collector of the district concerned in pursuance of the orders received from time to time from the Income-tax Officer.

On June 8, 1959, the petitioner filed the present writ petition challenging the legality of the demand notice dated December 2, 1949, and the subsequent proceedings taken in pursuance of that notice. The case of the petitioner is that after the coming into force of the Constitution of India on January 26, 1950, the demand notice could not be given effect to and the proceedings taken in pursuance of that notice are unconstitutional inasmuch as they violate his fundamental rights guaranteed by the Constitution. In the petition a reference has been made to Articles 14, 31 and 19(1)(g) of the Constitution, but the argument before us has proceeded on the contention urged on behalf of the petitioner that there has been a violation of the fundamental right of equal protection of the laws guaranteed to him under Art. 14 of the Constitution inasmuch as he has been dealt with differently from other debtors who owe money to the State under a contractual liability. The substantial prayer of the petitioner is for the issuance of a writ of mandamus directing the respondents not to give effect to the notice of demand dated December 2, 1949, nor to take any proceedings for enforcing the terms of settlement and for recovery of the sums specified therein.

The petition has been contested by the respondents and the principal point taken on their behalf is that

the legality of the demand notice dated December 2, 1949, cannot be challenged by the petitioner on the strength of the provisions of the Constitution, because the Constitution is prospective and not retrospective; secondly, it is contended on behalf of the respondents that the subsequent proceedings taken in pursuance of the demand notice aforesaid do not in any way violate the right of equal protection of the laws guaranteed under Art. 14 of the Constitution.

It is convenient at this stage to refer to some of the earlier decisions of this Court on the question of constitutionality of some of the provisions of the Act. On May 28, 1954, this Court delivered judgment in *Suraj Mall Mohta and Co.* v. *A. V. Visvanatha Sastri and Another* (1). It is not necessary to state the facts of that decision. It is enough to say that it was held therein that sub-s. (4) of s. 5 of the Act was bad, as it offended the provisions of Art. 14 of the Constitution. Sub-section (4) of s. 5 of the Act having been declared void, Parliament passed the Indian Income-tax Amendment Act (33 of 1954) amending s. 34 of the Indian Income-tax Act, 1922. As a result of this amendment, the validity of sub-s. (1) of s. 5 of the Act came in for challenge on the ground that the Income-tax Officer could pick out some out of the class of substantial tax evaders and refer their cases under sub-s. (1) of s. 5 while dealing with other such persons under amended s. 34 of the Indian Income-tax Act. In *Shree Meenakshi Mills Ltd., Madurai* v. *A. V. Visvanatha Sastri and Another* (2), sub-s. (1) of s. 5 of the Act was held to be bad on that ground. It should be noted that in none of the petitions disposed of by that judgment had any assessment been made under the Act and this Court only prohibited further proceedings before the Commission under the Act. Finally, on December 20, 1955, came the decision of this Court in *M. CT. Muthiah & two Others* v. *The Commissioner of Income-tax, Madras & Another* (3). In that case, on a reference under s. 5(1) of the Act, the Commission submitted its report to Government under

(1) [1955] 1 S.C.R. 448. (2) [1955] 1 S.C.R. 787.
(3) [1955] 2 S.C.R. 1247.

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s. 8(1) of the Act on August 26, 1952—that is, after the coming into force of the Constitution, and the Central Government made its order under s. 8(2) of the Act on September 16, 1952. In these circumstances it was held:

> "The result, therefore, is that barring the cases of persons which were already concluded by reports made by the Commission and the directions given by the Central Government under section 8(2) of the Act XXX of 1947 culminating in the assessment or re-assessment of the escaped income, those cases which were pending on the 26th January 1950 for investigation before the Commission as also the assessment or re-assessment proceedings which were pending on the 26th January 1950 before the Income-tax Officers concerned in pursuance of the directions given by the Central Government under section 8(2) of the Act would be hit by Article 14 of the Constitution and would be invalidated."

Lastly, came the decision in *Basheshar Nath* v. *The Commissioner of Income-tax, Delhi & Rajasthan and Another* (1). That was a case of a settlement under s. 8-A of the Act as in the present case, but the fact which distinguishes that case from the present is that the settlement there was made after the commencement of the Constitution. It was held therein that the settlement was the result of a procedure which became discriminatory after the commencement of the Constitution and was therefore bad, and as the discriminatory process of investigation continued even after the commencement of the Constitution, the principle laid down in *Syed Qasim Razvi* v. *The State of Hyderabad and Others* (2) did not apply.

The point which requires emphasis with regard to these earlier decisions is this: they all dealt with the operation of a discriminatory procedure under the different provisions of the Act *after the commencement of the Constitution.* The position in the case under our present consideration is that the settlement, the order under s. 8-A(2) of the Act, and even the notice of demand in pursuance of that order—all these took

(1) [1959] Supp. 1 S.C.R. 528. (2) [1953] S.C.R. 589.

place before the coming into force of the Constitution, and this vital distinction must be borne in mind in considering the contentions urged by learned Counsel for the petitioner.

The main contention is that the proceedings taken against the petitioner in pursuance of the order under s. 8-A(2) are violative of the guarantee of equal protection of the laws under Art. 14 of the Constitution. There are, however, two subsidiary contentions which do not directly raise any question of the violation of a fundamental right, and these may be disposed of before we deal with the main contention.

In his petition the petitioner has stated that he received the demand notice dated December 2, 1949 in or about April, 1950. In the counter-affidavit of the respondents it has been stated that the assessee was informed of the demand early in December, 1949. A copy of the order of the Central Government under s. 8-A(2) of the Act dated November 21, 1949, was sent to the petitioner; there is an endorsement in the office copy of the demand notice dated December 2, 1949, that it was sent by registered post, acknowledgment due. Thereafter, the petitioner paid part of the tax on different dates without raising any objection that he had not received the demand notice before April, 1950. It was for the first time in April, 1959, some ten years after, that the petitioner asked for a copy of the order under s. 8-A(2) and information as to the date when he had received the registered notice of demad. He also asked for an inspection of the file. This was, however, refused. Then, the petitioner made the statement that he had received the demand notice in or about April, 1950. He said that the statement was based on his knowledge; he did not disclose the source of his knowledge nor did he say how he remembered ten years after, without reference to any documents, that he had received the demand notice in or about April, 1950. We are unable to accept the statement as correct. On the materials in the record it is clear that the proceedings against the petitioner culminating in the service of the notice of demand against him were all completed

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before the coming into force of the Constitution and the petitioner cannot challenge those proceedings under Art. 14 of the Constitution; for it is well settled that the Constitution is prospective and not retrospective.

On the construction of s. 8-A of the Act it has been argued that after the order made by the Central Government under sub-s. (2) thereof, a fresh assessment was necessary and as no such assessment was made, all subsequent proceedings for recovery of the tax are illegal. This is a point which has not been specifically taken in the petition. That apart, we do not think that there is any substance in this contention. We may here read s. 8-A, so far as it is relevant:

"S. 8-A. (1) Where any person concerned in any case referred to or pending before the Commission for investigation applies to the Commission at any time during such investigation to have the case or any part thereof settled in so far as it relates to him, the Commission shall, if it is of opinion that the terms of the settlement contained in the application may be approved, refer the matter to the Central Government, and if the Central Government accepts the terms of such settlement, the Commission shall have the terms thereof recorded and thereupon the investigation, in so far as it relates to matters covered by such settlement, shall be deemed to be closed.

(2) For the purpose of enforcing the terms of any settlement arrived at in pursuance of sub-section (1), the Central Government may direct that such proceedings as may be appropriate under the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940) or any other law may be taken against the person to whom the settlement relates, and, in particular, the provisions of the second proviso to clause (a) of sub-section (5) of section 23, section 24B, the proviso to sub-section (2) of section 25A, the proviso to sub-section (2) of section 26 and sections 44 and 46 of the Indian Income-tax Act, 1922 shall be applicable to

the recovery of any sum specified in such settlement by the Income-tax Officer having jurisdiction to assess the person by whom such sum is payable as if it were income-tax or an arrear of income-tax within the meaning of those provisions."

The scheme of s. 8-A is different from that of s. 8. The latter section contemplates an assessment or reassessment in accordance with the direction of the Central Government; see sub-s. (4) of s. 8. That is not the position under s. 8-A, sub-s. (2) whereof provides for the enforcement of the terms of any settlement arrived at in pursuance of sub-s. (1). There is no doubt a reference to certain special provisions of the Indian Income-tax Act, 1922, regarding assessment of partners in a registered firm, tax payable by the representative of a deceased person etc.; but the reference to those provisions does not necessarily mean that a fresh assessment must be made. They merely show that these special provisions will be applicable in appropriate cases. Sub-s. (2) ends by saying that "ss. 44 and 46 of the Indian Income-tax Act, 1922, shall be applicable to the recovery of any sum specified in such settlement by the Income-tax Officer having jurisdiction to assess the person by whom such sum is payable as if it were income-tax or an arrear of income-tax within the meaning of these provisions." This clearly shows that the true scope and effect of the sub-section is to enforce the terms of any settlement arrived at in pursuance of sub-s. (1) and to recover any sum specified in such settlement as if it were income-tax or arrear of income-tax in accordance with the provisions of ss. 44 and 46 of the Indian Income-tax Act, 1922. We are unable, therefore, to accept the construction which learned Counsel for the petitioner seeks to put on the sub-section.

This brings us to the main contention that the petitioner has been subjected to a discriminatory procedure after the coming into force of the Constitution by reason of s. 8-A(2) of the Act. Learned Counsel for the petitioner has put his argument in the following way. He has submitted that what the petitioner agreed to pay to Government was really a

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debt arising out of a contract viz., the settlement between him and Government and the petitioner is one amongst the larger class of persons who are debtors of Government; against all other debtors Government have the ordinary remedy by way of suit but against the petitioner a special remedy is provided which is more drastic and envisages the imposition of a penalty under s. 46 of the Indian Income-tax Act, 1922, if the petitioner is in default in making a payment of the amount due. This, it is argued, is a discriminatory procedure which has been continued even after the coming into force of the Constitution. We are unable to accept this argument as correct. First of all, the petitioner does not really belong to the larger class of persons whom learned Counsel has characterised as debtors of Government. The petitioner belongs to a special class who had evaded payment of Income-tax and had entered into a settlement to pay the amount due as income-tax or arrear of income-tax. For this class of persons the procedure laid down in s. 8-A(2) is one and the same, and no discrimination is made in favour of or against any member of the same class. The classification is a reasonable classification having a just relation to the object of the provision. For the recovery of the amount due as income-tax or arrear of income-tax all these persons are treated on the same footing. Neither is there any discrimination between them and other persons similarly placed in the matter of recovery of income-tax or arrears of income-tax. Secondly, it is open to the legislature to make a law as to how particular Government dues should be realised and if the law applies equally to all persons similarly situated, no objection can be taken to such law on the ground of discrimination. The truth of the matter is that what the petitioner agreed to pay to Government is really income-tax which should have been paid in regard to the relevant assessment years but which had escaped assessment and therefore the recovery is to be made according to income-tax law. That is all that s. 8-A(2) says. In the decisions of this Court to which we had earlier adverted, what was held to be bad was

the application of a discriminatory procedure after the coming into force of the Constitution; even in *Basheshar Nath's case* (1) the Commission applied the discriminatory procedure after the coming into force of the Constitution and then submitted its report on May 24, 1954, and the Central Government accepted the settlement on July 5, 1954. It was held that the settlement itself was vitiated by the discriminatory procedure adopted by the Commission. That is not the position here. In this case everything was concluded before January 26, 1950, when the Constitution came into force, including the issuance of a notice of demand. All that remained to be done was the recovery of the amount according to the notice of demand. Therefore, the crucial question is—is the recovery procedure discriminatory in any way, having regard to the undoubted validity of the proceedings which had been taken against the petitioner before January 26, 1950? We are unable to answer this question in favour of the petitioner for the reasons which we have already stated.

Learned Counsel for the petitioner relied on the decision in *M. L. M. Muthiah Chettiar and Others* v. *Commissioner of Income-tax, Madras* (2). The facts of that case were entirely different and no question arose there of considering the provisions of s. 8-A (2) of the Act.

For these reasons we hold that there is no merit in the petition which is, accordingly, dismissed with costs.

Petition dismissed.

(1) [1959] Supp. 1 S.C.R. 528.

(2) [1959] 35 I.T.R. 339.