Before Rajendra Nath Mittal and J. V. Gupta, JJ.

COMMISSIONER OF INCOME TAX,—*Appellant.*

versus

RAMAN INDUSTRIES, LUDHIANA,—*Respondent.*

Income-Tax Reference No. 72 of 1974.

August 27, 1979.

Income Tax Act (XLIII of 1961) as amended by Taxation Laws (Amendment) Act (42 of 1970—Sections 271(1)(c) and 274(2)—Penalty proceedings pending before the Inspecting Assistant Commissioner—Amending Act conferring power to impose penalty on Income Tax Officers—Proceedings before Inspecting Assistant Commissioner—Whether could continue—Rule of interpretation of statutes—Amendment of section 274(2)—Whether retrospective.

Held, that it is a well settled principle of law that no statute shall have retrospective effect unless its language requires such construction. If a statute has a retrospective effect, it is not to be construed so as to have a greater operation. A statute which effects vested rights must be presumed to be prospective. The Legislature may, however, make its operation retrospective so as to take away vested rights. There is an exception to this principle and it is regarding a statute dealing with procedure. Such statute has a retrospective effect but if its provisions effect the vested rights, it is prospective and not retrospective unless there is an indication in the statute to the contrary. The jurisdiction of a Tribunal to try a case is a vested right and is to be determined according to the law in froce at its inception. A change in law pending the case cannot affect the right of the parties to continue proceedings in that Tribunal in the absence of the provisions to the contrary. There is no provision in the Taxation Laws (Amendment) Act 1970 which shows that the amendment in section 274 of the Income Tax Act 1961 is retrospective. The section deals with vested rights and, therefore, it is prospective. Consequently, the Inspecting Assistant Commissioner had the jurisdiction to impose the penalty.

(Paras 7 and 10).

Radheshayam Agarwalla v. *Commissioner of Income tax Orissa & others* (1978) 113 I.T.R. 196.

Commissioner of Income tax Lucknow v. *Pearey Lal Radhey Raman* (1979) 117 I.T.R. 319. DISSENTED FROM.

Commissioner of Income Tax *v.* Raman Industries, Ludhiana
(R. N. Mittal, J.)

Reference under section 256(1) *of the Income-Tax Act,* 1961 *made by the Income-Tax Appellate Tribunal (Chandigarh Bench) Chandigarh arising out of its order dated 5th March,* 1974 *in I.T.A. No.* 177 *of* 1972-73 *for the opinion of following question of law for the assessment year* 1965-66.

> *"Whether, on the facts and circumstances of the case the Tribunal was right in law in holding that the Inspecting Assistant Commissioner of Income-tax was not legally competent to pass the penalty order ?".*

D. N. Awasthy, Advocate with B. K. Jhingan, Adv, *for the petitioner.*

B. S. Gupta, Advocate with Naginder Singh, Advocate, *for the respondent.*

JUDGMENT

R. N. Mittal, J.

(1) The Income-tax appellate Tribunal, Chandigarh Bench, at the request of the Commissioner of Income-tax, Patiala referred the following question of law for decision of this Court under section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act) :—

> "Whether, on facts and circumstances of the case the Tribunal was right in law in holding that the Inspecting Assistant Commissioner of Income-tax was not legally competent to pass the penalty order ?"

Briefly the facts which have given rise to this reference are as follows :—

(2) The assessee is a registered firm and manufactures and sells tool bits. For the accounting year ending 31st March, 1965 relevant to the assessment year 1965-66, the assessee filed a return of income on September 30, 1965 wherein it showed its income as Rs. 10,365. While making the assessment the Income-tax officer noticed that the assessee had purchased goods worth Rs. 96,648 for which bills were not produced by it. He also categorised 26 separate cash credits the peak of which on February 8, 1965 came to Rs. 60,882. The assesssee when asked to explain the source of the

credits, did not furnish any explanation, but said that the amount of Rs. 60,882 be included in the assessment subject to an adjustment of Rs. 31,000 which had been taxed in the earlier year. The income-tax Officer allowed the deduction of Rs. 31,000 as claimed and assessed tax at Rs. 29,882 as income from undisclosed sources. It also agreed to pay tax on business income of Rs. 30,118 as against income of Rs. 10,365 as declared by him earlier. Thus the assessment was completed on 26th February, 1970 at a total sum of Rs. 60,000. The assessee did not file any appeal against the assessment order.

(3) The Inome Tax Officer initiated penalty proceedings under section 271(1)(c) of the Act before completing the assessment and as the minimum penalty imposable exceeded Rs. 1,000, the matter was referred to the Inspecting Assistant Commissioner. He *vide* order dated March 29, 1972 passed under section 274(2) read with section 271(1)(c) of the Act levied a penalty of Rs. 4,239. The assessee went up in appeal against the order of the Inspecting Assistant Commissioner to the Tribunal. The Tribunal held that the onus to prove genuineness of the cash credits lay upon the assessee and it had not been discharged. Consequently, the penalty under section 271(1)(c) was exigible. The assessee had pleaded that the penalty proceedings should have been finalised on or before March 25, 1972, but as the same had been finalised on March 29, 1972, the penalty order was barred by limitation. The Tribunal did not accept the contention of the assessee and come to the conclusion that under section 275 of the Act as amended with effect from April 1, 1971, the Inspecting Assistant Commissioner could legally pass an order on March 29, 1972. It was also argued on behalf of the assessee that on account of amendment of sections 274(2) and 275 by Taxation Laws (Amendment) Act, 1970, which came into force from April 1, 1971, the Inspecting Assistant Commissioner could assume jurisdiction if the minimum penalty imposable exceeded Rs. 25,000. In the case in hand the minimum penalty was Rs. 4,239 and therefore, the Inspecting Assistant Commissioner had no jurisdiction to levy the penalty. The Tribunal accepted the contention and cancelled the penalty. At the request of the Commissioner of Income-tax, the above said question has been referred for the opinion of this Court.

(4) The learned counsel for the Revenue has contended that at the time of institution of the penalty proceedings, the Inspecting

Assistant Commissioner had the jurisdiction to impose penalty. Later, by virtue of Taxation Laws (Amendment) Act, 1970 (Act 42 of 1970) (hereinafter referred to as the Amendment Act), which came into force on April 1, 1971, the jurisdiction to levy penalty was conferred on the Income-Tax Officer. He submits that if the Inspecting Assistant Commissioner had the jurisdiction to impose penalty when the proceedings were initiated, subsequent amendment in the Act would not divest him of that jurisdiction. Mr. Awasthy argues that once a person institutes a case in a Tribunal, he has a vested right to continue the proceedings in the same Tribunal, notwithstanding that later on account of amendment of the statute, the Tribunal had been deprived of its jurisdiction. He further argues, that there is only one exception to the above principle. It is, that if there is an express provision in the statute which gives a retrospective effect to the amendment, the Tribunal is deprived of its jurisdiction. According to him, the Inspecting Assistant Commissioner, therefore, had the jurisdiction to impose penalty even after the Amendment Act came into force. On the other hand, Mr. Gupta, learned counsel for the assessee has vehemently argued that the jurisdiction of the Tribunal is a matter relating to procedure. He further submits that it is well settled that the procedural laws have retrospective effect and, therefore, the Amendment Act, would have a retrospective effect. According to him, the Inspecting Assistant Commissioner after enforcement of the Amendment Act was deprived of the jurisdiction to decide the question of penalty against the assessee. He submits that therefore, the penalty imposed by the Inspecting Assistant Commissioner was illegal.

(5) We have heard the learned counsel for the parties at a considerable length and find force in the contention of Mr. Awasthy. Before dealing with the matter, it is necessary to notice the relevant sections. Section 271 deals with the powers of the Income Tax Officer and the Appellate Assistant Commissioner to impose penalties and Section 274 with the procedure. The aforesaid sections before the Amendment Act read as follows :—

> "271. (1) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that any person—
>
> (a) * * * *

(b) * * * *

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty,—

(i) * * * *

(ii) * * * *

(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished.

(2) * * * *

(3) * * * *

(4) * * * *

(4-A) * * * *

(4-B) * * * *

"274. (1) * * * *

(2) Notwithstanding anything contained in clause (iii) of sub-section (1) of section 271, if in a case falling under clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.

(3) * * * *"

(6) No amendment was made by the Amendment Act in the aforesaid provisions of Section 271. The amendment was, however, made in Section 274(2). After the amendment, the said sub-section reads as follows:—

"(2) Notwithstanding anything contained in clause (iii) of sub-section (1) of section 271, if in a case falling under clause (c) of that sub-section, the amount of income (as

determined by the Income-tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

From a perusal of the sections it is evident that before amendment, the Income-tax Officer could deal with penalty proceedings in case the penalty imposable was not more than Rs. 1,000. If the penalty exigible was more than Rs. 1,000, then he had to refer the case to the Inspecting Assistant Commissioner, who had the jurisdiction to deal with the matter. After amendment of sub-section (2) of Section 274, if the minimum penalty that could be imposed was more than Rs. 25,000, than the Income-tax Officer was required to refer the matter to the Inspecting Assistant Commissioner but if the penalty was less than Rs. 25,000, he could himself impose it. In the present case, it may be highlighted that the penalty imposed is Rs. 4,239. Therefore, there is no dispute that before the amendment, it was the Inspecting Assistant Commissioner who could impose a penalty on the assessee and after the amendment Act, it was the Income-tax Officer who could do so. The main question involved in the case is as to whether the amendment of sub-section (2) of Section 274 is prospective or retrospective.

(7) It is a well-settled principle of law that no statute shall have retrospective effect unless its language requires such construction. If a statute has a retrospective effect, it is not to be construed so as to have a greater retrospective operation. A statute which effects vested rights must be presumed to be prospective. The Legislature may, however, make its operation retrospective so as to take away vested rights. There is an exception to the above principle and it is regarding a statute dealing with the procedure. Such statute has a retrospective effect but if its provisions effect the vested rights, it is prospective and not retrospective. In this regard, it will be advantageous to refer to the following observations of Lord Blackburn in Gardner v. Lucan (1).

"Now, the general rule, not merely of England and Scotland but I believe of every civilized nation, is expressed in the

(1) (1877) 3 A.C. 582.

maxim, *'Novs Constitutio futuris formen imponers debet, non prasteritis'* and the new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance, I think it is perfectly settled that if the Legislature intended to frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly these bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are also retrospective, unless there is some good reason or other why they should not be. Then again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal. *But where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid-to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, bindig—I think the* prima facie *construction of the Act is that it is not to be retrospective, and that it would require strong reasons to show that is not the case.....*" (Emphasis supplied).

(8) In order to see whether the amendment of sub-section (2) of section 274, affected retrospectively or not, it is necessary to determine as to whether it takes away a vested right of the assessee. It cannot be disputed that the right to institute proceedings is a procedural matter. It is also well-settled that if a statute takes away the jurisdiction of a Tribunal regarding initiation of the proceedings or appeal, it takes away the vested right. It becomes vested at the time when the proceedings are instituted in a Tribunal. A litigant cannot be deprived of that right I am fortified in the abovesaid observation by a dictum of the Privy Council in *Colonial Sugar Refining Company Ltd.* v. *Irving* (2),—

> "To deprive a suitor in a pending action of an appeal to a superior Tribunal which belonged to him as of right is a

(2) (1905) AC 369 (PC).

very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new Tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested." (Emphasis supplied).

The above observations are fully applicable to the present case. This matter also came up before the Federal Court in two cases, namely, *United Provinces* v. *Mt. Atiqa Begum and others* (3),) and *Venugopals Reddier and another* v. *Krishnaswami Reddiar alias Raja Chidambbara Reddier and another* (4). The relevant observations of Sulaiman, J., speaking for the Bench in *Mt. Atiqa Begum's case* (supra) are as follows:—

"It is a well recognized rule that statutes should, as far as possible be so interpreted, as not to affect vested rights adversely, particularly when they are being litigated. *When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed*". (Emphasis supplied).

Varadachariar, J., while speaking for the Court in *Vanugopala Reddiar's case* (supra), held that a right to continue a duly instituted suit is in the nature of vested right and it cannot be taken away except by a clear indication of intention to that effect. Similar matter came up before the Bombay High Court in *C. P. Bannerjee* v. *S. S. Irani* (5). In that case, the plaintiff filed a suit for recovery of a sum of Rs. 1,000/- on September 12, 1947, on the original side of the High Court. Subsequently, the Bombay Legislature enacted several enactments which were contemplated to deprive the High Court of jurisdiction to try suits cognizable by the Small Cause Court as well as the Bombay City Civil Court which was then about to be established. The Legislature intended to deprive the High

(3) A.I.R. (28) 1941 Federal Court 16.
(4) A.I.R. (30) 1943 Federal 24.
(5) A.I.R. (36) 1949 Bombay 182.

Court of this jurisdiction to receive, try and determine suits between Rs. 1,000 and Rs. 2,000 which could be instituted by the plaintiff at his election in the High Court acting under the provisions of S. 21, Presidency Small Cause Courts Act. The Legislature also intended to deprive the High Court of the jurisdiction to receive, try and determine suits not exceeding Rs. 10,000 in value and arising in Greater Bombay which were intended by it to the cognizable by the Bombay City Civil Court which was about to be established. No provision was, however, made by the Legislature for transfer of suits pending in the High Court to Small Cause Courts. It was held by N. H. Bhagwati J., that the absence of such provision had the result of continuing the jurisdiction of the High Court in the matter of determination and trial of suit which had been rightly received by it. Following observations of the learned Judge may be reproduced *in extenso*:—

> "... Normally it would not have a retrospective operation. It has been laid down as a fundamental of the English Law, which we have been following here, that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. There is no doubt that so far as the statutes are concerned a distinction is broadly made between procedural statute and statutes which affect the substantive rights of the parties. There is no vested right which a subject has in regard to procedure. *But with regard to the jurisdiction of the Court in which he has a right to institute proceeding a subject can have a vested right.* That this is so is amply borne out by authorities and I shall only content myself with quoting one of them which is an authority of the Federal Court, a judgment of Varadachariar, J., Reported in *Vanugopala v. Krishnaswami* (supra), and the passage at page 27, column 1 thereof :
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> 'It will be noticed that in that case the Judiciary Act was passed during the pendency of the action in the Court of first instance and their Lordships decision recognized, that from the date of the initiation of the action, the suitor had a right of appeal to a superior Tribunal according to the state of the law as it stood at the time of the commencement of the proceeding. This necessarily involves the recognition of an equally valuable

right that the proceedings should in due course be tried and disposed of by the Tribunal before which it had been commended. This principle that a statute should not be so interpreted as to take away an action which has been well commenced has been affirmed in various cases in differing circumstances. In *Marsh* v. *Higgins* (6), it was observed by Wilds, C.J., that it must have been well known to both branches of the Legislature that strong and distinct words would be necessary to defeat a vested right to continue an action which has been well commenced.' " (Emphasis supplied).

A Division Bench of Madras High Court in *Ganapathy Raja Valia Raja of Edapally Sivaroopam* v. *The Commr. for Hindu Religious and Charitable Endowments, Madras and others* (7), that a party has vested right to have a suit tried in a forum in which it was commenced. Such a right is a substantive one and is not in the realm of procedural law. There is no difference in principle between the case of an appeal and that of a suit. It is further observed that a statute should not, therefore, be so construed as to take away an action which has been well commenced.

(9) Sections 271 and 274 as amended by the Amendment Act came up for interpretation before Gujrat High Court in *Commissioner of Income Tax, Gujarat* v. *R. Ochhavlal & Co.* (8), and *Commissioner of Income-Tax* v. *Royal Motor Car Co.* (9), and before Andhra Pradesh High Court in *Addl. Commissioner of Income-Tax, Anantapur* v. *Dr. Khaja Khutabuddinkhan* (10), wherein a similar interpretation was taken. In *R. Ochhavlal & Co's case* (supra), it was held that the jurisdiction of the Inspecting Assistant Commissioner to deal with the penalty matter is to be looked at as on the date of initiation of proceedings and not with reference to the subsequent events and such jurisdiction cannot be divested by what subsequently happened. This view was again taken by the same High Court in *Royal Motor Car Co's. case* (supra). In *Dr. Khaja Khutabuddinkhan's case* (supra), a Division Bench of the Andhra Pradesh High

(6) (1859) 9 C.B. 551 (19 L.J.C.P. 297).
(7) A.I.R. (42) 1955 Madras 378.
(8) (1976) 105 I.T.R. 518.
(9) (1977) 107 I.T.R. 753.
(10) (1978) 114 I.T.R. 905.

Court said that if during the time when the matter of penalty had been referred to and was pending before the Inspecting Assistant Commissioner, the law was changed and the minimum penalty for purpose of making a reference to the Inspecting Assistant Commissioner was raised from Rs. 1,000 to Rs. 25,000 it does not mean that the jurisdiction of the Inspecting Assistant Commissioner to impose penalty is taken away. We are in respectful agreement with the abovesaid observations.

(10) From the above observations it emerges that a statute dealing with procedure is always retrospective and its provision also apply to the proceedings pending at the time of its enactment but where some provisions of a statute of procedure affect vested rights, these are prospective in operation unless there is an indication in the statuts to the contrary. The jurisdiction of a Tribunal to try a case is a vested right and is to be determined according to the law in force at its institution. A change in law pending the case cannot affect the right of the parties to continue proceedings in that Tribunal in the absence of the provision to the contrary. There is no provision in the Amendment Act which shows that the amendment in Section 274 of the Act is retrospective. The Section deals with vested right and, therefore, it is prospective. Consequently, the Inspecting Assistant Commissioner had the jurisdiction to impose the penalty.

(11) The learned counsel for the assessee has referred to the decisions of Orissa and Allahabad High Courts in *Radheshayam Agarwalla* v. *Commissioner of Income-Tax Orissa and others* (12), and *Commissioner of Income-Tax Lucknow* v. *Pearey Lal Radhey Raman* (13), wherein contrary view has been taken. With great respect to the learned Judge, we are not inclined to accept their view.

(12) For the aforesaid reasons, we answer the question in the negative, i.e., in favour of the revenue. No order as to costs.

J. V. Gupta, J.—I agree.

H.S.B.

(11) (1978) 113 I.T.R. 196.
(12) (1979) 117 I.T.R. 319.

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