The Indian Law Reports

Punjab and Haryana Series

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

PIARA LAL AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No 2095 of 1964

February 25, 1966

Punjab Professions, Trades, Callings and Employments Taxation Act (VII of 1956)—S. 3—Levy of tax under the Act—Whether legal—Person carrying on trade or profession, etc., both within and without the State of Punjab—Income earned outside the State—Whether can be included in his income earned inside the State for purposes of tax—Partners of Punjab firms carrying on business outside the State—Whether liable to tax under the Act—Firm—Whether can be taxed—Legality of imposition of tax—Onus to prove—On whom lies— Machinery prescribed for calculation of tax—Whether can increase the burden of tax or bring a person, transaction or enterprise within the scope of the tax.

Held, that Article 276 (1) of the Constitution clearly provides that notwithstanding anything contained in Article 246, no law of the State Legislature can be declared to be invalid on the ground that it relates to a tax on income so long as the law made by the Legislature levies the tax in respect of professions, trades, callings or employments and is made for the benefit of the State. Punjab Professions, Trades, Callings and Employment Taxation Act, 1956, satisfies both those conditions and its validity is, therefore, not affected by the fact that the impost created by the Act is related to income.

Held, that an analysis of section 3 of the Act shows that no tax levied under the Act will come within this section unless :—

(i) it is on a person who carries on trade or follows profession, etc., either wholly or in part within the State of Punjab ; and

(ii) the liability to pay tax under the Act is in respect of only such profession or trade, etc., as is carried on within the State.

It is thus clear that any profession, trade, calling or employment which is not within the State of Punjab, or any part of the same which is not within the State is outside the scope of section 3. The income earned outside the State of Punjab by a person who is also carrying on trade or profession, etc., within the State cannot be taxed under the Act by including it in his income earned inside the State.

Held, that the Act provides for a tax on professions, trades, callings and employments and it does not matter whether the person concerned is himself within the State or not as section 3 clearly covers the case of a person who carries on trade within the State either by himself or by an agent or representative. The partners who are carrying on trade or business within the State, are agents and representatives of their other partners who are outside the State. A person may be living within the State of Punjab but would not be liable to tax under the Act if he is not carrying on any trade, business or calling within the State either wholly or in part or is not employed within the State. It is not the residence of the person but the *situs* of the profession, trade, calling or employment which should be within the State.

Held, that the "person" as defined in section 2(d) of the Act includes a Hindu undivided family and an incorporated company but not a partnership firm. The effect thereof is that the total gross income of a firm cannot be taken into account for determining the imposition of the levy under the Act but the share of each individual partner's income has to be taken into account separately for taxing him. The firm as such cannot be taxed as it is not a person

Held, that Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Whenever, therefore, the legality of imposition of any tax is questioned in appropriate proceedings, it is for the Assessing Authority to show that the tax has been duly authorised by a valid provision of law. No person is taxable by inference or analogy and tax can be levied only by plain words of a statute if the imposition falls strictly within its four corners. Wherever there is a reasonable doubt or there are two possible interpretations a construction most beneficial to the subject has to be adopted. If a person sought to be taxed comes within the letter of the law, he has to be taxed, however, great the hardship may appear to result to him, as no consideration of equity enters the field of taxation matters. On the other hand, if the Revenue cannot bring the subject within the letter of the law, the subject, is free, however apparent the intention or the spirit of the law may appear to be against him. No construction of the machinery part of a taxing statute can be allowed to bring any transaction or income within the mischief of the Act, if it is not otherwise covered by the charging section or provisions. Nor can the burden of the tax be increased by resort to such a device. Whether tax is liable to be imposed on a person, property or enterprise is to be determined solely with reference to the provisions which deal with the manner of determination or the machinery prescribed for the recovery of the tax. The machinery sections provide mere aids to

the taxing authorities to determine and calculate the tax and not by themselves permit imposition of a tax or an extended burden of the tax which does not fall within the four corners of section 3 of the Act. The factum and quantum of tax under the Act are both subject to the limitations imposed by and the circumscribed limits contained in section 3. The limitation in the matter of *situs* of profession or trade, etc., imposed by section 3 of the Act is so clear and meaningful as not to allow the same to be destroyed by mere enlargement of the definition of "total gross income" in section 2(b) by the amending Act. The said amendment must, therefore, be treated as immaterial and ineffective in view of the charging section having been left in tact and unaffected by it.

Petition under article 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus *or any other appropriate writ, order assessment for the year* 1963-64 *and amount deposited be refunded.*

S. K. JAIN, ADVOCATE, for the Petitioners.

J. N. KAUSHAL, ADVOCATE-GENERAL WITH M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

ORDER

NARULA, J.—The common point of law which calls for decision in all these six writ petitions is whether for the purpose of deciding the question of liability for payment of professional tax under section 3 of the Punjab Professions, Trades, Callings and Employments Taxation Act, 7 of 1956 (as amended by Act 10 of 1962), hereinafter called the Act, the Assessing Authorities can or cannot take into account the income of a person carrying on a trade or profession within the State of Punjab in respect of his trade or profession which is carried on outside the State. The facts which have given rise to this question are similar in all these six cases with minor variations.

Piara Lal, Harbans Lal, Vidya Sagar and Roshan Lal, petitioners in C.W. No. 2095 of 1964 are partners of the registered firm Ram Gopal-Ram Karan which has its head office at Hoshiarpur and a branch at New Delhi. Each of the petitioners has an equal share in the firm. Whereas Piara Lal and Harbans Lal, are working at Hoshiarpur, Vidya Sagar and Roshan Lal are in charge of the business in Motia Khan, Delhi. For the financial year 1st August, 1961 to 31st July, 1962, the petitioners submitted a return to respondent No. 2, the Assessing Authority under the Act at Hoshiarpur, showing an income of Rs. 11,232.14 nP. in respect of their business carried on by them within the State of Punjab. A copy of the said return is annexure A to the writ petition. As a partnership firm is not a

"person" within the meanings of the Act, the said income had to be divided into four equal parts to determine whether each of the partners was liable to pay any tax under the Act at all and if so, how much. According to the return furnished by them the petitioners would not be liable to pay any tax under the Act as a person is exempt from payment of any tax at all if his annual gross income is less than Rs. 6,000. The income of the firm of the petitioners in respect of their Delhi business earned by the Delhi Branch was admittedly Rs. 14,454.54 nP. for the year in question. This was the figure of the income of the Delhi Branch according to the income-tax return of the petitioners. Under orders of respondent No. 2, a copy of the income-tax return was filed with the said Assessing Authority. Relying on the Division Bench judgment of this Court, dated August 19, 1960, in *Beli Ram and another* v. *The Assessing Authority and Treasury Officer, Amritsar and another* (1), the petitioners claimed that the income of their Delhi Branch could not be taken into account either for the purposes of deciding the liability of the petitioners to tax under the Act or for the purpose of computation of the same. Relying on a snbsequent amendment of the definition of "total gross income", in the Act by section 2 of the Punjab Professions, Trades, Callings and Employments Taxation (Amendment) Act, 10 of 1962 (hereinafter referred to as the Amending Act), the Assessing Authority rejected the contention of the petitioners, took into account the income of the petitioners in respect of the business carried on by them at Delhi and thus taking the total gross income of all the four petitioners at Rs. 30,932 calculated the share of each petitioner which came to more than Rs. 6,000 per annum and on that basis levied professional tax of Rs. 120 on each of the four petitioners. A copy of the assessment order passed in respect of Piara Lal, petitioner No. 1 has been attached as annexure B to the writ petition. Notice of assessment of tax under the Act for the next financial year was then issued to the petitioners returnable for September 21, 1964. Thereupon these petitioners filed C.W. No. 2095 of 1964 in this Court on 24th September, 1964 which was admitted to Division Bench by S. S. Dulat and J. S. Bedi, JJ., on 1st October, 1964. The prayer of the petitioners in this case is for quashing and annuling the assessment orders in respect of the first year and the notice in respect of the subsequent year.

The second case of Mr. S. K. Jain, Advocate is C.W. No. 2706 of 1965. Rikhab Dass and three others are partners of Messrs Nathu

(1) I.L.R. (1961)1 Punj. 137=1960 P.L.R. 846.

Mal-Fattu Mal, who have their head office at Hoshiarpur and branches at Amritsar within Punjab and at Delhi, Agra and Bombay outside the State of Punjab. According to the return filed by them with the Assessing Authority under the Act for the year 1962-63, the gross income of the petitioners in respect of their Amritsar and Hoshiarpur business was Rs. 16,377.94 Paise which would not attract the imposition of any tax under the Act on either of the four petitioners. The Assessing Authority wanted to tax the petitioners under the Act in respect of the income of thier branches outside the State of Punjab also. Before the assessment orders could be passed they filed this writ petition (2706 of 1965), on 25th October, 1965 to restrain the respondents, the State of Punjab and the Assessing Authority under the Act, from taking into account the gross income of the petitioners in respect of their business outside the State of Punjab and for declaring the Amending Act to be unconstitutional and *ultra vires* the legislative powers of the Punjab State.

Mr. Prem Chand Jain, Advocate has filed C.W. 2728 of 1965 on behalf of Messrs Hansa Agencies, a firm of six partners carrying on business with head office at Jullundur and branches at New Delhi and Muradabad. Assessment orders have been made against the petitioners under the Act in respect of not only the income of their business carried on in Punjab but also in respect of their New Delhi and Muradabad Branches. Copy of assessment order, dated 30th January, 1965, in respect of the year ending 31st March, 1963, has been filed by the petitioner whose prayer in the petition is to quash the same.

The remaining three petitions have been filed by Mr. Gokal Chand Mittal, Advocate, C.Ws. No. 2391 of 1964 and 2392 of 1964 have been filed on behalf of the partners of various firms. C.W. No. 2588 of 1964 has been filed by Prem Sukh Dass as *Karta* of Hindu undivided family firm Messrs Premsukh Dass-Ram Kishore of Sirsa, district Hissar. In each of these three cases the prayer is to quash the impugned assessment orders on the solitary ground that those have been based on extraneous and irrelevant material and consideration consisting of income of the petitioners in respect of their business carried on outside the State of Punjab.

As the solitary question of law arising in all these six petitions is the same, they are being disposed of by this one judgment. The relevant constitutional and statutory provisions may first be noticed.

Article 245(1) of the Constitution lays down that Parliament may make laws for the whole or any part of the territory of India and the Legislature of a State may make laws for the whole or any part of its respective State. Article 245(2) states that laws having extra-territorial operation made by the Parliament would also be valid. No validity is, however, extended to laws made by the State Legislature which may have extra-territorial operation. Article 246(3) of the Constitution bestows on the Legislature of every State exclusive power to make laws "for such State or any part thereof" with respect to any of the matters enumerated in List II in the 7th Schedule, i.e., enumerated in the "State List". Entry 60 in the State List in the 7th Schedule to the Constitution reads as follows:—

"Taxes on professions, trades, callings and employments."

Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Whenever, therefore, the legality of imposition of any tax is questioned in appropriate proceedings, it is for the Assessing Authority to show that the tax has been duly authorised by a valid provision of law.

Article 276 deals with taxes on professions, trades, callings and employments and is in the following terms :—

[His Lordship read Article 276 and continued]:

No other provision of the Constitution appears to be relevant for deciding this case. In the Act itself section 3 is the charging section and the same is in the following words:—

> "3. *Levy of tax*—Every person who carries on trade, either by himself or by an agent or representative, or who follows a profession or calling, or who is in employment, either wholly or in part, within the State of Punjab, shall be liable to pay for each financial year or a part thereof a tax in respect of such profession, trade, calling or employment:
>
> Provided that for the purpose of this section a person on leave shall be deemed to be a person in employment."

Section 4 provides that the tax under the Act shall be levied at the rates specified in the Schedule annexed to it. According to the

schedule no tax is payable under the Act by a person whose income does not exceed Rs. 6,000. A person whose income exceeds Rs. 6,000 but does not exceed Rs. 8,500 is liable to pay Rs. 120 per annum. A person whose income exceeds Rs. 8,500 but does not exeed Rs. 13,500 has to pay Rs. 150 and if the income of a person exceeds Rs. 13,500 but does not exceed Rs. 25,000 he has to pay Rs. 200 per year. The persons whose income exceeds Rs. 25,000 per annum have to pay the maximum of Rs. 250 per year. Of course, the income in the case of all the categories mentioned in the schedule is the total gross annual income.

The manner of determination and computation of tax payable under the Act is laid down in section 5 which provides that the tax shall be determined with reference to the total gross income during the previous year provided that the tax payable by any person shall not exceed Rs. 250 for any financial year. Explanations (a), (b) and (c) to section 5 give a list of the expenses which are liable to be deducted from the gross income in computing "the total gross income" of any person under that section.

The expression "total gross income" used in section 5 of the Act is defined in section 2(b) of the Act. The definition of this phrase in the principal Act, before its amnedment was in the following terms:—

> "total gross income" means aggregate of gross income derived from various professions, trades, callings and employments."

I need not refer to any other provision in the Act for the purpose of deciding these cases.

The question which has now arisen for decision in these cases arose before the amendment of the Act in *Beli Ram, etc.* v. *The Assessing Authority and Treasury Officer, Amritsar and another* (1). Dulat and Pandit, JJ., who decided that cases, posed the question which arose before them in the following words:—

> "The question is whether the assessing authority when computing the tax is entitled to take into account only the gross annual income derived from a profession, trade, calling or employment within the State or whether

income derived from a profession, trade, calling or employment outside the State is also to be considered."

The Division Bench answered the above question in favour of the assessee with the following observations:—

"The argument on behalf of the assessing authorities is that every person, who carries on any trade or calling within the State of Punjab, is liable to be taxed, and the petitioners admittedly fall in that category, and that once that matter is decided, then the amount of the tax is to depend on the entire income of the assessee arising out of trades, callings, etc., even if some of those trades, etc., are carried on outside the State. There are no express words in the Act to support this contention and, although there is nothing clearly expressed to the contrary either, the indications are that the "total gross income" is intended to mean only the total of the gross income from various trades, callings, etc., within the State of Punjab and, where such a trade or calling is partly carried on within the State, the income from that part of the trade or calling which is within the State. I say this because the intention of the Act apparently is to tax a trade or profession or calling or employment within the State of Punjab, and the tax is to be levied, according to section 3 of the Act, "in respect of such profession, trade, calling or employment."

Dulat, J., who wrote the judgment of the Court further observed *in Beli Ram's* case, as below:—

"It seems to me that the assessing authority must be confined to the aggregate of income derived from various professions, trades, callings and employments carried on or engaged in within the State of Punjab.....Considering the language of the Act in question in its proper context, it seems to me extremely difficult to say that the Act authorises the assessing authority to take into account the gross income of an assessee from a trode, calling, profession or employment carried on outside the State of Punjab. I would, therefore, hold that the view adopted by the assessing authority that the assessment of professions tax is to be made on the basis of total gross income, whether earned

in the Punjab or outside the State of Punjab, is not sustainable, and allow these petitions and direct that the assessing authority be prohibited from taking into account the gross income of an assessee earned outside the State of Punjab."

The above-quoted decision of this Court in *Beli Ram's case* appears to have been based on four considerations, namely:—

(i) the expression "total gross income" is intended to mean only the total of the gross income from trades, etc., carried on within the State;

(ii) the intention of the Act is to tax a trade or profession, etc., within the State of Punjab and the tax is to be levied according to section 3 of the Act "in respect of" such profession, trade, etc.;

(iii) the ordinary rule is that in construing a taxing statute the bias should be in favour of the assessee and the authority to impose a particular tax must be clearly found in the words of the taxing statute itself, and

(iv) considering the language of the relevant portions of the Act in their proper context it is extremely difficult to say that the Act authorises the assessing authority to take into account the gross income of an assessee in respect of trade or profession, etc., carried on by him outside the State of Punjab.

The Punjab State, however, appears to have thought that the above-said judgment of the Court was based solely on the first out of the above-quoted four considerations. With a view to enlarge the scope of the Act the Punjab Legislature, therefore, passed the Amending Act by section 2 of which the following words were added to the definition of total gross income in section 2(b) of the principal Act:—

"Whether such profession or calling is followed, trade is carried on or employment is, within or outside the State of Punjab."

It is, however, significant that no amendment was made in the charging section; i.e., in section 3 of the Act which continues to be as it was before the passing of the Amending Act.

The first argument of Mr. S. K. Jain the learned counsel who has addressed the main arguments on behalf of the petitioners in these cases, is that the impugned levy is illegal as it is related to income. Mr. Jain argues that this makes the tax under the Act a tax on income and is, therefore, violative of Article 246 of the Constitution which authorises only the Parliament to make laws relating to imposition of income-tax. I find no force in this contention of the learned counsel. Article 276(1) of the Constitution which has already been quoted above, clearly provides that notwithstanding anything contained in Article 246 no law of the State Legislature can be declared to be invalid on the ground that it relates to a tax on income so long as the law made by the Legislature levies the tax in respect of professions, trades, callings or employments and is made for the benefit of the State. The Act under scrutiny satisfies both those conditions and its validity is, therefore, not affected by the fact that the impost created by the Act is related to income.

It was then sought to be contended by Mr. Jain that the partners of the Punjab firms, who were carrying on business in Delhi or at other places outside Punjab, could not be taxed under the Act. There appears to be no froce even in this contention of the learned counsel. The Act provides for a tax on professions, trades, callings and employments and it does not matter whether the person concerned is himself within the State or not as section 3 clearly covers the case of a person who carries on trade within the State either by himself or by an agent or representative. The partners who are carrying on trade or business within the State, are agents and representatives of their other partners who are outside the State. A person may be living within the State of Punjab but would not be liable to tax under the Act if he is not carrying on any trade, business or calling within the State either wholly or in part or is not employed within the State. It is not the residence of the person but the *situs* of the profession, trade, calling or employment which should be within the State. I have, therefore, no hesitation in rejecting this contention.

An argument was then made on the basis of the definition of "person" in section 2(d) of the Act by which a Hindu undivided family and an incorporated company have been included within that phrase but a partnership firm has not been so included. The only

effect of this situation is that the total gross income of a firm cannot be taken into account for determining the imposition of the levy under the Act but the share of each individual partner's income has to be taken into account separately for taxing him. The assessing authority has not sought to tax any of the firms as such in any of the six cases before me. No assistance can, therefore, be sought by the petitioners with reference to the definition of "person" contained in section 2(d) of the Act.

The next argument of Mr. Jain is that in the absence of amendment of the charging section the scope of the impost cannot be enlarged by the mere amendment of the sections providing the machinery for the calculation, determination or computation of the tax. The submission of the learned counsel is that whatever may be the method provided for computation of the tax leviable under the Act, the assessing authorities have no jurisdiction to outstep the limits of the charging section so as to rope in any person who would not be liable to pay tax by the impact of section 3 alone nor to put on any person a larger or heavier burden of tax than that to which he can be subjected within the four corners of section 3. Without in any manner dealing with the question of the authority of the Punjab Legislature relating to the extent to which it could or can legislate in this connection it seems to be apparent from a mere reading of section 3 of the Act that what the legislature has so far expressly provided is only the imposition of tax "in respect of" professions, trades, callings or employments within the State of Punjab. An analysis of section 3 would show that no tax levied under the Act would come within this section unless:—

(i) it is on a person who carries on trade or follows professions, etc., either wholly or in part within the State of Punjab; and

(ii) the liability to pay tax under the Act is in respect of only such profession or trade, etc., as is carried on within the State.

Profession, trade, calling or employment in respect of which tax under section 3 can be levied is qualified by the word "such" which takes us back to profession, trade, etc., "within the State of Punjab". It is conceded by the learned Advocate-General that the levy of tax under the Act would not be valid if it is in respect of any profession,

trade, calling or employment not covered by section 3 of the Act. It seems to be clear that any profession, trade, calling or employment which is not within the State of Punjab, or any part of the same which is not within the State is outside the scope of section 3. On this basis it is argued that the law laid down by Dulat, and Pandit, JJ., in *Beli Ram's case* still holds good in spite of the amendment of section 2(b) of the Act. Mr. J. N. Kaushal, the learned Advocate-General, has submitted that as soon as it is admitted that the petitioners are persons and that they are carrying on trade or business within the State of Punjab, they at once fall within the net of the Act and are liable to be taxed thereunder. Once it is found that the petitioners fall within section 3 of the Act, they cannot then, argues the Advocate-General, escape assessment under the Act on the ground that part of their income is earned by their arms which extend beyond the State. This, according to the State counsel, involves merely a process of computation and does not touch the basis of the imposition. This precise argument on behalf of the taxing authorities was rejected by Dulat and Pandit, JJ., in *Beli Ram's case* and I am in full agreement with that view. A basic and oft-repeated principle of interpretation of taxing statutes is the one laid down by their Lordships of the Supreme Court in *A. V. Fernandez* v. *The State of Kerala* (2). It was held in that case that in construeing fiscal statutes and in determining the liability of a subject to tax, one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the fiscal law, the subject can be taxed, if, on the other hand the case is not covered strictly within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter. This dictum of their Lordships of the Supreme Court is a complete answer to the argument of the learned Advocate-General to the effect that the only object of the Punjab Legislature in amending section 2(b) of the principal Act was to meet the criticism of this Court in *Beli Ram's case* and to give legislative sanction to the course which was struck down by this Court in that case. As held by the Supreme Court in *A. V. Fernandez's case*, it is not open to this Court to justify or uphold the imposition of tax under the Act by probing into the intention of the Legislature however apparent it may be. All that

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(2) A.I.R. 1957 S.C. 657.

we have to see is whether the tax based on or calculated according to the gross income of the petitioners in respect of their trade or business outside the State of Punjab falls within section 3 or not. In view of what has been stated above, I am clearly of the view that the answer to this question is in the negative. No person is taxable by inference or analogy and tax can be levied only by plain words of a statute if the imposition falls strictly within its four corners. Wherever there is a reasonable doubt or there are two possible interpretations, a construction most beneficial to the subject has to be adopted. If a person sought to be taxed comes within the letter of the law, he has to be taxed however great the hardship may apear to result to him, as no consideration of equity enters the field of taxation matters. On the other hand, if the Revenue cannot bring the subject within the letter of the law, the subject is free however apparent the intention or the spirit of the law may appear to be against him. I am further of the opinion that no construction of the machinery part of a taxing statute can be allowed to bring any transaction or income within the mischief of the Act, if it is not otherwise covered by the charging section or provisions. Nor can the burden of the tax be increased by resort to such a device. Whether tax is liable to be imposed on a person, property or enterprise is to be determined solely within reference to the charging section and not with reference to the provisions which deal with the manner of determination or the machinery prescribed for the recovery of the tax. The machinery sections provide mere aids to the taxing authorities to determine and calculate the tax and do not by themselves permit imposition of a tax or an extended burden of the tax which does not fall within the four corners of section 3. The factum and quantum of tax under the Act are both subject to the limitations imposed by and the circumscribed limits contained in section 3.

The limitation in the matter of *situs* of profession or trade, etc., imposed by section 3 of the Act is so clear and meaningful as not to allow the same to be destroyed by mere enlargement of the definition of "total gross income" in section 2(b) by the amending Act. The said amendment must, therefore, be treated as immaterial and ineffective in view of the charging section having been left in tact and unaffected by it.

It was held by a Division Bench of this Court (Mehar Singh and Shamsher Bahadur, JJ.), in *Ganga Ram Suraj Parkash* v. *The State of Punjab* (3) that the charging section is the kernel of the entire

(3) (1963)14 Sales Tax cases 476.

taxing enactment and without it the remaining provisions would become inchoate and ineffective. By enacting a charging section the Legislature imposes a tax. Neither the impost nor the extent of its burden can be allowed to outstep the charge created by the Legislature. Levy of the tax by enacting a charging section is the legislative function. The assessment or official determination of the liability within the charge created by the Legislature is a quasi-judicial function. The collection of the amount so assessed is an executive function. These three steps in the matter of taxation broadly embrace the entire proceedings for raising money by the exercise of taxing powers. The machinery for assessment and collection cannot be allowed to provide the imposition or recovery of any amount which is not within the levy created by the Legislature.

Mr. Kaushal has argued on behalf of the Revenue that even in taxing statutes the Court should reconcile the various sections in an Act in order to give effect to the object of the Legislature. There is no quarrel with this proposition of law. The object of the Legislature must, however, be apparent from the letter of the law and is not to be gathered from evidence of alleged intention of the Legislature. The learned Advocate-General then referred to the law laid down by their Lordships of the Privy Council in *Commissioner of Income-tax, Bengal* v. *Messrs. Mahaliram Ramjidas* (4). I do not, however, think that the dictum of the Privy Council in that case can successfully be called in aid by the State at all. All that was held in the case of *Messrs Mahaliram Ramjidas* was that interpreting the sections relating to the machinery of assessment in a fiscal statute the rule is that such construction should be preferred which makes the machinery workable. It was nowhere laid down in that case that the machinery section can control or be permitted to enlarge the scope of the charging section. Reference was then made on behalf of the State to the judgment of the Supreme Court in *Gursahai Saigal* v. *Commissioner of I. T., Punjab* (5). In that case it was held that sub-section (6) of section 18-A of the Income Tax Act, 1922, being only a provision which lays down the machinery for the calculation of the tax, the rule of literal construction, which applies only to a taxing provision, should not be applied to it. On the other hand, it was held in that case, the proper way to construe the machinery section is to give it an interpretation which makes the

(4) A.I.R. 1940 P.C. 124.
(5) A.I.R. 1963 S.C. 1062.

machinery workable. That does not, however, mean that the scope of the tax itself can be allowed to be enlarged merely by devising a machinery for that purpose without the charge being created by the Legislature itself. In this particular case it appears to me that the enlarged scope of the tax sought to be created by the amendment of section 2(b) of the Act outsteps the limits of the charging section and is, therefore, void and ineffective to that extent. In *M/s. Bajaj Electricals Lad., New Delhi* v. *The State of Punjab and another* (6), it was held by a Division Bench of this Court (Grover and Gurdev Singh, JJ.), that according to the clear language of section 3 of the Act the petitioners in that case could not be taxed as it had been found that the trade in which they were engaging was not being carried on wihin the State of Punjab. This was laid down on an interpretation of section 3 of the Act itself and the said dictum still holds good in the absence of any amendment of that provision.

After a careful consideration of the matter I, therefore, hold that in spite of the amendment of section 2(b) of the principal Act by section 2 of the Amending Act, the situation remains the same as it was at the time of the judgment of Dulat and Pandit, JJ., in *Beli Ram's case* and later at the time of the judgment of Grover and Gurdev Singh, JJ., in the *case of Bajaj Electricals Ltd.* It is significant that the judgment in the *case of Bajaj Electricals Ltd.*, was pronounced after the amendment. It is, therefore, held that the impugned notices for assessment of tax under the Act in so far as they relate to income of the petitioners in respect of their trade or business carried on outside the State of Punjab and all the impugned assessment orders which have been based on such extra-territorial income of the petitioners are liable to be set aside and quashed on this short ground.

In fairness to the learned counsel for the petitioners it is necessary to notice the last argument advanced in these cases to the effect that even if section 3 of the Act were to be amended so as to include therein income of the petitioners in respect of their business or trade carried on outside the State of Punjab, the said amendment would be *ultra vires* Article 245 of the Constitution on account of its extra-territorial operation which is not permitted. In the view I have taken of the main arguments of the learned counsel based on

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(6) I.L.R. (1964)2 Punj. 759=1964 P.L.R. 923.

section 3 of the Act as it stands today, it is not necessary to pronounce on this additional submission pressed before us on behalf of the petitioners though there appears to be some *prima facie* force in the same.

The argument regarding the amendment of section 2(b) not having any retrospective effect though taken in some of the writ petitions has not been pressed before us. Nor is it necessary to deal with the same in view of my finding to the effect that the impugned amendment has not at all adversely affected the assessees under the Act.

I would, therefore, accept all these writ petitions and set aside and quash the impugned notices and assessment orders for the reasons already stated above. I would also direct that the costs of the petitioners shall be paid by the respondents in each case.

DUA, J.—I entirely agree with my learned brother both in his reasoning and conclusion. I may merely add a few words on one aspect.

The learned Advocate-General has laid stress principally on his submission that the various sections of the Act must be read together for discovering the intention of the Legislature. Accordingly, reading sections 2, 4, and 5 along with the amended definition of the expression "total gross income" contained in section 2(b), so argues the learned advocate, it would be clear that the levy of tax contemplated by section 3 is intended to take within its fold even a person whose profession, calling, trade or employment extends to territories outside the limits of the State of Punjab and such a person can be taxed in respect of his entire profession, calling, trade or employment irrespective of the territorial limits of the State. In my opinion, there can be no quarrel with the proposition that in order fully to understand the legislative scheme, all the provisions of a statute must be read together because the statute read as a whole affords the best means of its exposition. It is also true that a legislature while enacting law may, as a part of its legislative function, define its meaning; and the meaning of the words and expressions so defined are considered authoritative and, therefore, binding on the Courts. Such internal legislative construction is undoubtedly of high value in discovering the intention of the Legislature. But the problem of definitions is not always easy, for one

thing, it never ends, indeed at times a statutory definition may confuse rather than clarify and simplify the legislative meaning. In that event, instead of affording to the Court the contemplated assistance, the statutory definition may embarass the Court in its decision. In the present case, the Act has been enacted for the purpose of imposing a tax on professions, trades, callings and employments for the benefit of the revenues of the Punjab State as contemplated by Article 276 of the Constitution. Section 3 of the Act restricts the levy of tax to a person who carries on trade or who follows a profession or calling is in employment, wholly or in part, within the State of Punjab in respect only of such trade, profession, calling or employment. There is little doubt that this section does not authorise levy of tax in respect of trade, profession, calling or employment outside the State of Punjab. The expression "wholly or in part" seems merely to clarify by way of abundant caution that simply because a person carries on trade or follows a profession or calling or is in employment partly outside the territory of the State of Punjab would not by itself put him outside the pale of section 3 even in respect of the part of trade, profession, calling or employment which happens to be within the territories of the State of Punjab. Section 5 of the Act which provides for the machinery for determining the amount of tax lays down that the tax payable would be determined with reference to the total gross income during the previous year of the person to be taxed under the Act. The expression "total gross income" as used in this section has been defined in section 2(b) and it is the amendment in this definition which has purported to enlarge its scope by including within its fold profession, calling, trade or employment even outside the State of Punjab. Had this definition clause been rigid, it would have apparently given rise to confusion and would perhaps have created a somewhat difficult and embarassing position for the Court. But the Legislature has, it seems to me, advisedly excluded from this statutory definition instances of repugnancy in the subject or context. If, therefore, the meaning assigned by the definition clause to the expression "total gross income" makes it repugnant to section 3 of the Act, then it is section 3 as enacted, which should control the definition clause and prevail over the latter, rather than that the definition clause should dominate and so operate as to have the effect of modifying or enlarging the scope of section 3. The argument of the learned Advocate-General apparently seems to ignore or at least it fails to attach sufficient importance to the opening words of section 2. Now, if the definition of the expression "total gross income" is intended, in the event of repugnancy, to yield and give way to section 3 of the Act,

then this would serve as an additional ground for not acceeding to the statutory definition a controlling power so as to enlarge by implication the scope of the charging section. Section 3 in express language restricts the levy to the professions, trades, callings or employments within the State of Punjab. The amended definition of "total gross income" seeks to extend the range of determination of the amount of tax payable even to professions, trades, callings and employments outside this State, indeed, the learned Advocate-General submits that the definition has been deliberately amended with this express purpose. It is thus obvious that these provisions are repugnant to each other and according to the legislative intendment, the definition clause has in that event to give way. The learned Advocate-General, however, argues that once a person falls within the provision of section 3 in the sense that his profession, trade, calling or employment is in part located within the State of Punjab, then the amount of tax payable by him in respect of such profession, etc., can legitimately be determined even by including in his taxable income his income from professions, etc., outside the State of Punjab, without violating the sanctity of the restriction imposed by section 3, and the amendment in the definition clause has merely the effect of modifying the mode of computing the amount of tax without outstepping the circumscribed limits of section 3. The argument so put seems at first sight attractive but its infirmity becomes obvious on a slightly deeper probe. Indeed, this argument seems to do away with the restriction in section 3, and to extend the scope of the charging section by means of the method of computation. Construing section 3 of the Act in the light of the definition clause, it becomes obvious that the real effect of the amendment is to extend the levy also to the profession, trade, calling or employment which is outside the State of Punjab. Section 5 in obedience to the constitutional mandate contained in Article 276 of the Constitution, fixes the maximum limit at Rs. 250 per annum and also provides the method of computation in the form of explanation. The practical application of this method discloses that the computation is directly concerned with the professions and callings, the income from which is the basis for the tax authorised by section 3. The repugnancy of the amended definition to section 3 thus seems to me to be difficult to deny. In face of section 3, therefore, the amended definition in section 2(b) will have to be ignored to the extent of repugnancy.

We are, however, expressing no considered opinion on the question whether the State can, at all, tax professions, trades, callings and employments outside its territorial limits, and whether

such a tax will not be hit by the doctrine of double taxation and also by the prohibition against extra-territorial taxation on the part of the States. It is, however, hoped that any further attempt in this direction would be ventured only after fully considering all the important aspects. It is relevant at this stage to point out that due care in drafting laws always helps minimising time-consuming conflicts over legislative intention in the judicial arena. I am deliberately using the word "minimise" because no matter how exacting one is in the use of legislative language, there will usually be a chance of there being a residue of uncertainty and ambiguity requiring resolution by the Courts. It is accordingly of the utmost importance that in the drafting of legislation, the draftsman should know precisely what is wrong with the existing law and whether under the constitutional limitations anything can be done by way of legislation to remedy the deficiency and should also be able to gauge the efficacy of the remedy. There is, in my view, hardly any kind of intellectual work which so much requires minds trained to the task through long and laborious study as the business of making laws. The quality of legislative organisation and procedure is reflected in the quality of legislative draftsmanship. In a country governed by the rule of law in which every citizen can approach the Courts against violations of law to his prejudice, it is of the utmost importance that laws are made after the due deliberation with an eye on the constitutional limits. This is all the more desirable in the case of taxing statutes, for, frequent interference by Courts, at the instance of citizens, with illegal impositions is neither a satisfactory nor a healthy state of affairs. Without saying anything more on the point, I agree with my learned brother in allowing the writ petitions with costs in each case.

B. R. T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

PHERU RAM AND OTHERS,—*Petitioners*

versus

CHIEF SETTLEMENT COMMISSIONER OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 2720 of 1965.

March 4, 1966.

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—*Rules 34-C and 34-D—Join sub-lessees—Whether entitled to allotment of land worth Rs* 15,000 *each.*