

PETITIONER:
DEWAN BAHADUR SETH GOPAL DAS MOHTA

Vs.

RESPONDENT:
THE UNION OF INDIA AND ANOTHER.

DATE OF JUDGMENT:
21/10/1954

BENCH:
MAHAJAN, MEHAR CHAND (CJ)
BENCH:
MAHAJAN, MEHAR CHAND (CJ)
DAS, SUDHI RANJAN
HASAN, GHULAM
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA

CITATION:
1955 AIR 1 1955 SCR (1) 773
CITATOR INFO :
R 1955 SC 257 (2)
R 1959 SC 149 (16, 30, 51, 52)
HO 1961 SC1457 (6)

ACT:
Constitution of India, Art. 32-Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) s. 5(1)-Investigation and Report by Commission in respect of profits made by assessee and tax payable by him-Mutual settlement between assessee and Government-Petition under Art. 32-Whether competent.

HEADNOTE:

The petitioner, a business man, was alleged to have made huge profits during the years of War and the Central Government acting under s. 5(1) of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947) referred his case to the Investigation Commission for investigation and report. During the pendency of the investigation the petitioner's application for settlement under the provisions of s. 8-A of Act XXX of 1947 was accepted by the Central Government and in pursuance thereof the tax was made payable by installments and the claim for evaded income-tax was thus finally settled by mutual agreement. When the installments in the sum of Rs. 4 lacs odd still remained due the petitioner preferred the present petition under Art. 32 of the Constitution alleging that the entire proceedings under Act XXX of 1947, were illegal, ultra vires, void and unconstitutional, that the Income-tax authorities were not competent to recover the amount due from him and that ss. 5, 6, 7 and 8 of the Act were ultra vires as they infringed Arts. 14, 19(1) (f) and 31 of the Constitution.

Held, that the petition under Art. 32 was not competent as whatever had already been paid or whatever was still recoverable from the petitioner was being recovered. on the basis of the

99
774
settlement between him and the Government. Article 32 is

not intended for relief against the voluntary actions of a person.

Suraj Mall Mohta Co. v. A. V. Visvanatha Sastri (A.I.R. 1954 B.C. 545) referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 315 of 1954. Petition under article 32 of the Constitution for enforcement of Fundamental Rights.

H.J. Umrigar, Narain Andley, J. B. Dadachanji and Rajinder Narain for the petitioner.

M. C. Setalvad, Attorney-General for India, and C. K. Daphtary, Solicitor-General for India (G. N. Joshi, Porusa Mehta and P. G. Gokle, with them) for the respondents.

1954. October 2 1. The Judgment of the Court was delivered by

MEHR CHAND MAHAJAN C.J.-The petitioner in this matter is a resident of Akola in the State of Madhya Pradesh and carries on business in various lines, i.e., oil mills, banking, money lending, etc. It is alleged that during the war years he made huge profits but evaded payment of tax. In the year 1948 the Central Government, acting under section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947, referred his case to the Investigation Commission for investigation and report, in respect of the profits made by him during the period commencing with 1st of January, 1939, and ending on 31st of December, 1947. The Commission, after investigation, reported on the 28th of February, 1951, that the income of the petitioner concealed and withheld from taxation was in the sum of Rs. 27,25,363 and the tax payable by him amounted to Rs. 18,44,949.

During the pendency of the investigation the petitioner applied for settlement under the provisions of section 8-A of Act XXX of 1947. This application was forwarded along with the report by the Commission to the Central Government. In the settlement application the applicant proposed that he was prepared to pay the sum of RE; . 18,44,949 as under:

775

On or before 25-6-1951--Rs. 3,44,949

On or before 25-3-1952-- Rs. 5,00,000

On or before 25-3-1953--Rs. 5,00,0000

On or before 25-3-1954--Rs. 5000,000

and that, he be given credit for a sum of Rs. 32,034-4.6 already paid by him, The Central Government accepted this proposal and the claim for evaded income-tax was thus finally settled by mutual agreement. The assessee, subsequently, asked for more time to pay these instalments and this was, also granted from time to time.

Commencing from 16th of July, 1951, and till the 10th April, 1954. the petitioner paid a total sum of about Rs. 14,00,000 towards discharge of the liability voluntarily agreed to by him on account of the tax evaded. A sum of Rs. 4,50,000 still remains due and is payable in instalments up to the 25th of March, 1955. By one of the terms of the settlement the petitioner undertook not to transfer, mortgage, charge or alienate or encumber in any manner whatsoever any of his movable or immovable properties, barring stock-intrade of the business, except with the permission of the Commissioner of Income-tax and except for the purpose of the payment of the tax due under the settlement.

In June, 1954, after the decision by this Court of *Suraj Mal Mohta v. A. V. Visvanatha Sastri and Another*(1), the petitioner preferred this petition under the provisions of article 32 of the Constitution alleging that he had been advised that the entire proceedings under the Act which had resulted in the imposition upon him of a liability of Rs. 18,44,949 and in the payment already made of an aggregate amount of Rs. 13,99,175 were wholly illegal, ultra vires, void and unconstitutional and that the Income-tax authorities were not legally entitled to recover the amount of Rs. 4,50,000 from him. In the grounds of the petition it was stated that sections 5, 6, 7 and 8 of Act XXX of 1947 were invalid and ultra vires in so far as they contravene the provisions of articles 14, 19(1) (f) and 31 of the Constitution and that under the Act

(1) A.I.R. 1954 S.C. 545.

776

there was no reasonable or equitable basis for classification, and that the Act gave to the executive unrestrained and absolute right to pick and choose and to differentiate between the same class of taxpayers. It was also alleged that the procedure prescribed by the Act for discovering concealed profits was substantially different and was more prejudicial to the assessee than the procedure prescribed under the Indian Income-tax Act by section 34. In the concluding paragraph of the petition it was prayed that an appropriate writ or direction be issued quashing the entire proceedings, and all orders passed under the Act by the Central Government and the respondent Commission, and restraining them from taking any proceedings whatsoever under the Act against the petitioner. It was further prayed that a direction be issued for restoration to the petitioner of a sum of Rs. 13,99,715-10-6 with interest at 6 per cent and that the respondents be further restrained from taking any action against the petitioner for the recovery of the sum of Rs. 4,50,000 with interest.

In our judgment this petition is wholly misconceived. Whatever tax the petitioner has already paid, or whatever is still recoverable from him, is being recovered on the basis of the settlement proposed by him and accepted by the Central Government. Because of his request for a settlement no assessment was made against him by following the whole of the procedure of the Income-tax Act. In this situation unless and until the petitioner can establish that his consent was improperly procured and that he is not bound thereby he cannot complain that any of his fundamental rights has been contravened for which he can claim relief under article 32 of the Constitution. Article 32 of the Constitution is not intended for relief against the voluntary actions of a person. His remedy, if any, lies in other appropriate proceedings.

The learned counsel for the petitioner contended that apparently the application for a settlement seems to have been made under the pressure of circumstances and in view of the coercive machinery of Act XXX of 1947 and the settlement arrived in such circumstances

777

was not binding and could not, be enforced. Whatever be the merits of such a contention, it obviously cannot be raised in an application made under the provisions of article 32 of the Constitution. The forum for investigating such allegations is elsewhere.

The result is that this petition fails and is dismissed with costs.

Petition dismissed.

JUDIS