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*Zaverbhai Amaidas* v. *The State of Bombay.*

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this Court which was presented under article 132(1), the only ground that was put forward as involving a substantial question as to the interpretation of the Constitution was, whether the Bombay Act No. XXXVI of 1947 was repugnant and void under article 254 of the Constitution. No other question having been raised in the petition, we must decline to permit the appellant to raise this point.

In the result, the appeal fails and is dismissed.

*Appeal dismissed.*

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*October* 28.

## INDIA UNITED MILLS LTD.

*v.*

## COMMISSIONER OF EXCESS PROFITS TAX, BOMBAY.

[MEHR CHAND MAHAJAN C.J., S. R. DAS GHULAM HASAN, BHAGWATI and VENKATARAMA AYYAR JJ.]

*Excess Profits Tax Act (XV of 1940), ss. 15, 26(3)—Meaning and import of the word 'discovers'—Allowance granted to assessee on his representation—Subsequent facts show that representation as untrue, Effect of.*

The word 'discovers' in s. 15 of the Excess Profits Tax Act, 1940, is not limited to facts discovered, which existed during the relevant chargeable accounting period for which assessment is re-opened under the section but also includes facts so discovered which came into existence subsequent to such accounting period.

Allowance was granted to an assessee by the Central Board of Revenue under s. 26(3) of the Act for the chargeable accounting period during the war on the ground that certain buildings, plant and machinery provided for production of war materials will not be required for the purposes of assessee's business after the termination of the war. But it was discovered that even after the termination of war the buildings, plant and machinery in question were actually used by the assessee for his business.

*Held,* that the Excess Profits Tax Officer had ample power to proceed against the assessee to reassess him under s. 15 of the Act.

*Dodwarth* v. *Dale* ([1936] 2 K.B. 503 : 20 Tax Cases 285); *Anderton and Halstead Ltd.* v. *Birrell* ([1932] 1 K.B. 271 : 16 Tax Cases 200); *Gray* (*H.M. Inspector of Taxes*) v. *Lord Penrhyn* (21

Tax Cases 252); *Williams* v. *Trustees of W. W. Grundy* ([1934] 1 K.B. 524, 533); *Commercial Structures Ltd.* v. *Briggs* ([1948] 2 All England Reports 1041) and *Inland Revenue Commissioners* v. *Pearson; Same* v. *Pratt* ([1936] 2 K.B. 533), referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 160 of 1953.

Appeal by Special Leave from the Judgment and Order dated the 1st day of April, 1952, of the High Court of Judicature at Bombay in Income-tax Reference No. 49 of 1951.

*R. J. Kolah* and *Rajinder Narain* for the appellant.

*M. C. Setalvad, Attorney-General for India, (G. N. Joshi* and *P. G. Gokhale,* with him) for the respondent.

1954. October 28. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—This is an appeal from the judgment of the High Court of Bombay on a reference under section 66(1) of the Indian Income-tax Act, and the question for determination is as to the validity of certain re-assessments made under section 15 of the Excess Profis Tax Act, which will hereafter be referred to as the Act.

In proceedings for assessment of excess profits for the year 1941, the appellant Company applied for relief under section 26(3) of the Act, which so far as is material for the purpose of this appeal, runs as follows:

"If on an application made to it through the Excess Profits Tax Officer the Central Board of Revenue is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely—

* * *

(b) the provisions of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities;

* * *

The Central Board of Revenue may direct that such allowances shall be made in computing the profits of

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the business during that chargeable accounting period as the Central Board of Revenue thinks just :

Provided that in making such direction the Central Board of Revenue may impose such conditions as it deems appropriate."

In their application under section 26(3) under the heading *"buildings, Plant and Machinery provided for the production of War Materials, which will not be required for the purposes of the business after the termination of the present hostilities"*, the assessees stated that the production of khaki textiles for war purposes had "necessitated additional plant in the Company's Dye Works"; that the requirements as to canvas had "necessitated additional Textile machinery for the various doubling processes and additional winding machinery for the Canvas waft"; that "much of the additional plant purchased by the Company in 1941 comes under these two headings"; and that "their manufacture in bulk will cease once the war is over and the plant bought for their manufacture will be idle and will have to be disposed of." The assessees then proceeded to give particulars of the machinery and plant which "will undoubtedly have to be scrapped after the war", and whose "postwar value would be as scrap material." Then they set out "the additional buildings, plant and machinery which have been installed as a war measure", and estimated their value at Rs. 4,85,633.

On this application, the Central Board of Revenue passed the following order :

"The Central Board of Revenue having considered the application of E. D. Sasoon United Mills Ltd. under sub-section (3) of section 26 of the Excess Profits Tax Act, 1940, that, by reason of the following circumstances, *viz.*,—

That the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities,

the computation of the profits of that business during the chargeable accounting period commencing 1st January, 1941, and ending 31st December, 1941, in

accordance with the provisions of Schedule I of the Act would be inequitable.

I (the First Secretary, Central Board of Revenue) hereby give you notice that the Central Board of Revenue has directed that,

allowance of Rs. 4,06,394 shall be made in respect of such circumstances, in computing the profits of such chargeable accounting period,—such allowance to be inclusive of all depreciation allowable for excess profits tax purpose in respect of the assets in question."

There were similar applications by the assessees for relief under section 26(3) of the Act for the accounting periods 1942 and 1943, and similar orders were passed by the Central Board of Revenue granting allowance respectively of Rs. 4,00,000 and Rs. 3,94,000.

The war terminated on 31st March, 1946. In the course of enquiry into the assessable profits of the Company for the chargeable accounting period ending 31st March, 1946, the Excess Profits Tax Officer found that the buildings, plant and machinery in respect of which relief had been granted under section 26(3) of the Act were being actually used by the assessees for the purposes of their business even after the termination of the hostilities. He therefore decided to take action under section 15 of the Act, and issued the requisite notices thereunder to them for re-opening the assessment for the years 1941, 1942 and 1943. That was resisted by them on the ground that the facts discovered did not relate to the years of account, and could not therefore form the basis for re-opening the assessments for those years. By his order dated 28th December, 1948, the Excess Profits Tax Officer overruled this contention, and revised the assessments for the periods in question on the footing that there were no grounds for granting relief to the assessees under section 26(3) of the Act. This order was confirmed on appeal by the Appellate Assistant Commissioner, but was reversed by the Appellate Tribunal, which held by a majority that it was not open to the Officer to take action under section 15 of the Act on the basis of facts, which had come into existence subsequently. The respondent thereupon applied for reference under

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section 66(1) of the Income-tax Act, and section 21 of the Act, and on that application, the Tribunal referred the following question of law for the decision of the High Court :

"Whether the revised assessments for the chargeable accounting periods 1941, 1942 and 1943 are liable to be cancelled on the ground that the Excess Profits Tax Officer erred in invoking the provisions of section 15 of the Excess Profits Tax Act."

There was also another question referred by the Tribunal to the High Court, and that was answered adversely to the appellant. But as no argument was addressed before us on that question, there is no need to refer to it.

The reference came before Chagla C. J. and Tendolkar J., who disagreeing with the Tribunal held that the fact "the assessee had obtained excessive relief" and the discovery of the fact that it has used buildings, plant or machinery for the purpose of its own business after the war" were sufficient to bring the case within the purview of section 15 of the Act, and accordingly answered the question in the negative. The correctness of this decision is challenged in this appeal, which comes before us by special leave, on the ground that on a proper construction of that section the Excess Profits Tax Officer had, on the facts found, no power to revise the assessment for the accounting periods 1941, 1942, and 1943.

Section 15 of the Act is as follows :

"If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or re-assess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section."

For this section to apply, two conditions must be satisfied: (1) the profits of any chargeable accounting period must have escaped assessment or must have been under-assessed, or must have been the subject of excessive relief; and (2) that must have been discovered by the Excess Profits Tax Officer in consequence of definite information. There is no question that on the facts found, the first condition has been satisfied. The representations on which the appellant obtained relief under section 26(3) of the Act were that the buildings, plant and machinery would not be fit for use after the war. It was only on that ground that relief could be granted under that provision. And when the appellant continued to use the machinery in business after the termination of the war, the very basis on which relief had been granted to it had disappeared, and the result was that the assessable profits for the chargeable accounting periods had been the subject of excessive relief.

The controversy is thus limited to the question whether on the facts found the Excess Profits Tax Officer could be held to have discovered that there was grant of excessive relief. The contention of Mr. Kolah on behalf of the appellant was that discovery for the purpose of section 15 of the Act must be of facts which were in existence during the chargeable accounting period, and that facts which came into existence subsequent to the chargeable accounting period could under no circumstances be made the basis for reassessment of the profits of that period. On behalf of the respondent, the learned Attorney-General contended that the words "If the Excess Profits Tax Officer discovers" in section 15 of the Act meant nothing more than that "if the Excess Profits Tax Officer finds or satisfies himself"; that there was no justification for importing into the section a limitation that discovery should relate to facts in existence during the chargeable accounting period; and that when once it was found by the Excess Profits Tax Officer that the buildings, plant and machinery were in use after the war, and that accordingly there had been a grant of

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excessive relief, the requirements of the section were fully satisfied.

Considering the question on the language of section 15 of the Act, it is difficult to find therein any support for the contention, which has been urged on behalf of the appellant. It is general in its terms, and would apply whenever there is, as a result of definite information, a finding by the Excess Profits Tax Officer that chargeable profits had escaped assessment, or had been under-assessed, or had been the subject of excessive relief. There is nothing in the wording of the section which would exclude its application, when that finding is based on facts which come into existence subsequently. It is argued by Mr. Kolah that the word "discovers" can aptly be used only when the facts on which the discovery is made were in existence during the chargeable accounting period. In its natural and ordinary sense, the word "discovers" carries no such limitation. The meaning given to it in the Oxford English Dictionary is "the finding out or bringing to light that which was previously unknown." (Vol. 3, page 433). It will therefore be correct to say that when a person comes to know of a fact of which he had no previous knowledge he discovers that fact, whether his want of knowledge is due to its not having been in existence during the material period, or to its having been unknown to him even though it might have been in existence. The word thus being one of wide import, what meaning it bears in any particular enactment must depend on the context.

We must accordingly examine what indications there are in the Act, which will show the precise connotation of the word "discovers" in section 15 of the Act. That section is, it should be emphasised, not a charging section, but a machinery section. And a machinery section should be so construed as to effectuate the charging sections. Section 15 is intended to vest in the Excess Profits Tax Officer a power to amend the assessment, when it is found that the relief granted is in excess of what the law allows. One of the sections under which relief could be granted under the Act is

section 26(3), and therefore section 15 must be so interpreted as to confer a power on the Excess Profits Tax Officer to revise the assessment when relief had been erroneously granted under that section. Now, section 26(3) provides for relief being granted when the buildings, plant or machinery would not be required by the assessee for his business after the war. And when it is found that after obtaining a relief under that section, the assessee uses buildings, plant and machinery in his business after the war, and that he has in consequence obtained a relief to which he was not entitled under the Act, where is the machinery set up by the Act for imposing the correct charge, unless it be under section 15 ? And how is that section to be invoked if "discovery" is to be limited to facts, which were in existence during the chargeable accounting period ? The relief to be granted under section 26(3) is by its very nature with reference to a state of affairs *in futuro ;* and a finding that it has been erroneously granted could be reached only on the basis of facts which must arise subsequent to the chargeable accounting period. To hold that no action could be taken in such cases under section 15 is to hold that the statute has provided no machinery for carrying into effect the conditions prescribed in section 26(3).

It was contended that the Central Board of Revenue might, acting under the proviso to section 26(3), have imposed appropriate conditions for safeguarding their interests before granting a relief under that section, that when there was a failure to observe the conditions of that section, the only course open to the respondent was to proceed under that proviso, and that action under section 15 was incompetent. This argument proceeds on a misconception of the true scope of section 26(3). If a condition had been imposed under the proviso to that section, and that condition was subsequently broken, the only action that could be taken thereon is initiation of proceedings for reassessing the profits, ignoring the relief granted under section 26(3) ; and the machinery therefore is provided only in section 15 of the Act. The scope of the two sections being different, the proviso to section 26(3)

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cannot be construed as affecting, to any extent, the jurisdiction conferred by section 15 of the Act.

We may now examine the decisions which have been cited by Mr. Kolah in support of his contention. In *Dodworth* v. *Dale*(1), the assessee, Dale, married one Kathleen Richards in 1921 and lived with her till 1933, in which year he obtained a decree declaring the marriage null and void on the ground of her incapacity. From 1921 to 1932 he had obtained reliefs under section 18(1) of the Finance Act under which a claimant is entitled to a deduction if he proves that "*for the year of assessment* he has his wife living with him or that his wife is solely maintained by him *during the year of assessment.*" In 1934 the Inspector of Taxes made additional assessments in respect of the deductions made during the years 1928 to 1932 on the ground that the marriage having been declared void *ab initio,* Dale must be held to have "obtained a deduction not authorised by this Act" as provided in section 125 of the Income Tax Act, 1918. It was held by Lawrence J. that the additional assessments were not justified under section 125, because the effect of a decree declaring marriage a nullity was not to wipe out the past and to undo what had been done, and that under section 18(1) of the Finance Act, the basis of relief was a *de facto* marriage. Then follow certain observations, on which the appellant relies :

"There is, however, another difficulty in the way of the Crown. In my opinion it is not lawful for an additional assessment or an original assessment to be made by reference to facts which arise after the year of assessment. In my view that is the reasoning of the decision of Rowlatt J. in *Anderton and Halstead Ltd.* v. *Birrell*(2).....In my view it is incompetent to the revenue authorities to make a fresh assessment on him by reason of a fact which is a real fact which arose after the year of assessment."

Though these observations appear at first sight to support the contention of Mr. Kolah, when examined closely it will be seen that that is not their true effect.

(1) [1936] 2 K. B. 503; 20 Tax Cas. 285.
(2) [1932] 1 K. B. 271; 16 Tax Cas. 200.

The assessee had been granted relief for the years 1928 to 1932, because he was in fact living with his wife or maintaining her during that period. The decree passed in 1933 could not alter that fact. If on that fact the assessee was entitled to relief for those years under section 18(1) of the Finance Act, then no question arose of his having obtained a deduction to which he was not entitled under the Act, in which event alone there could be further assessment under section 125. The decree passed in 1933 could not therefore be said to be "discovery" on which action could be taken under section 125, not because it was a subsequent event, but because it could have had no effect on a relief which depended on facts then in existence. That that is the ratio of the decision will appear from the following passages in the judgment :

"I apprehend that there is no distinction in this matter between an original assessment and an additional assessment under section 125. Taking section 125 of the Income Tax Act, 1918, for the purposes of illustration, and because it was the section under which the additional assessments were made in this case, it seems to me that section 18 of the Finance Act, 1920, and the Income Tax Act, 1918, relate to the facts as they exist at the time. The person chargeable was allowed a deduction, and he was *rightly allowed a deduction at the time*. He proved within the terms of section 18 of the Act of 1920 that his wife was living with him, and he was *rightly allowed a deduction at that time*."

The principle of this decision is that assessments should not be reopened on the basis of subsequent events, when the facts on which the assessments had been made remained unaffected thereby.

In this connection, reference may be made to the decision in *Gray* (*H. M. Inspector of Taxes*) v. *Lord Penrhyn*(1), where it was held that action under section 125 could be taken with reference to events which happened subsequently, those events having relation to the facts on which the assessments had been made. There, the assessee, who was the owner of a slate

(1) (1937) 21 Tax Cas. 252.

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quarry had shown in his income-tax returns various amounts as paid to labourers, and those amounts had been allowed as business expenses. In fact, sums amounting to £ 5,201 had been misappropriated by the officers employed by him and had not been expended. The defalcations were subsequently discovered, and in 1934 the assessee realised that amount from his auditor and his insurer as damages for negligence. The Income-tax Inspector sought to revise the assessments from 1930 to 1933 by claiming that amount as wrongly deducted during those years, or in the alternative, to assess it as a business income in 1934. The Commissioner held that the assessments for 1930 to 1933 could not be reopened on the basis of the receipt in 1934, as that was an event subsequent to the period of assessment, one of the cases relied on by him in support of his conclusion being *Dodworth* v. *Dale* (1). Finlay J. disagreed with this view. He held firstly that the amount could be treated as a business receipt and added :

"If I felt any difficulty about that, which I do not, I should be prepared to say that there is nothing in the authorities which prevents that re-opening which manifestly ought to be made, if necessary, and that if necessary the previous years ought to be re-opened".

Then there is the decision in *Anderton and Halstead Ltd.* v. *Birrell* (2) referred to in *Dodworth* v. *Dale* (1) and relied on by Mr. Kolah. There, the assessees had written off certain debts as irrecoverable in 1921 and 1922. The Inspector of Taxes had, on a consideration of all the facts, agreed to this, and assessments were made on the footing that they were bad debts. Thereafter, the assessees continued to have dealings with those debtors, and gave them further credit in subsequent years. On this, the Inspector sought to review the assessments on the ground that the debts were not, in fact, bad debts. In negativing this contention, Rowlatt J. observed that "the word 'discover' does not, in my view, include a mere change of opinion on the same facts and figures

(1) [1936] 2 K. B. 503; 20 Tax Cases 285.
(2) [1932] 1 K. B. 271; 16 Tax Cases 200.

upon the same question of accountancy, being a question of opinion", that under the Rules, the estimate to what extent a debt is bad was "not a prophecy to be judged by after events, but a valuation of an asset *de praesenti* upon an uncertain future to be judged with regard to its soundness as an estimate upon the then facts and probabilities", and that an estimate once made could not, on the same materials, be revised in subsequent years.

Apart from the fact that some of the observations contained in this judgment were considered by Finlay J. in *Williams* v. *Trustees of W. W. Grundy* (1) and by the Court of Appeal in *Commercial Structures Ltd.* v. *Briggs*(2), to have been widely expressed, the decision itself has no application to the facts of the present case. We are concerned here not with a valuation *in praesenti* of a debt estimated to be bad, but with a relief granted with reference to a state of facts which were anticipated to come into existence only in the future. Moreover, *Inland Revenue Commissioners* v. *Pearson* : *Same* v. *Pratt*(3) *and Anderton and Halstead* v. *Birrell*(4) are decisions on section 125 of the English Income Tax Act of 1918. There has been quite a literature on the meaning of the word "discovers" occurring in that section and in the corresponding sections of other English Income Tax statutes, and the question has also been considered in the Indian Courts on the language of section 34 of the Indian Income-tax Act, as it stood prior to the amendment of 1948. Whatever the position if the question were to arise under the Indian Income-tax Act—and there is no need to express any final opinion on it—having regard to the nature and scope of the provisions of the Excess Profits Tax Act and in particular section 26(3), we are of opinion that the word "discovers" in section 15 of the Act is of sufficient amplitude to take in subsequent events which have a material bearing on the facts and circumstances on which assessment had been made or

(1) [1934] 1 K. B. 524, 533.
(2) [1948] 2 A. E. R. 1041 at 1045, 1048 and 1049.
(3) [1936] 2 K. B. 533.
(4) [1932] 1 K. B. 271; 16 Tax Cas. 200.

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relief granted, and that when the Excess Profits Tax Officer finds that an assessee to whom relief had been granted under section 26(3) has utilised the buildings, plant or machinery in business after the termination of the war, he is entitled to proceed under section 15 of the Act.

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

*Appeal dismissed.*

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*November* 1.

## GENERAL FAMILY PENSION FUND

*v.*

## THE COMMISSIONER OF INCOME-TAX, WEST BENGAL.*

[MEHR CHAND MAHAJAN C.J., S. R. DAS, GHULAM HASAN, BHAGWATI and VENKATARAMA AYYAR JJ.]

*Indian Income-tax Act (XI of 1922), s. 10(7) and schedule Rule 2(a)(b) as published in 1939—Income-tax on insurance company—How ascertained—Statement of Departmental Representative, Effect of—Insurance Act (IV of 1938) s. 2(11)—Life Insurance business.*

In accordance with the provisions of s. 10(7) of the Indian Income-tax Act, 1922, the profits and gains of Life Insurance business for the periods 1943-1944 to 1946-1947 are to be computed under Rule 2(a) and Rule 2(b) of the rules published in 1939 and contained in the schedule to the Act. This computation should be made separately and independently once under Rule 2(a) and again under Rule 2(b). On such computation income-tax is to be levied on the greater of the two amounts so computed. It is erroneous to adopt the computation made under Rule 2(b) as the basis for computation under Rule 2(a).

Mere statement of the Departmental Representative of the Income-tax Department to the Tribunal referred to in the order of the Tribunal cannot have the effect of a finding of fact by the Tribunal.

Business of a company which consists in granting terminable pensions or annuities dependent on human life in favour of the subscribers or their nominees, is an insurance business within the meaning of s. 2(11) of the Insurance Act, 1938.