

L. HAZARI MAL KUTHIALA

v.

THE INCOME-TAX OFFICER, SPECIAL
CIRCLE, AMBALA CANTT.(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA,
J. C. SHAH and N. RAJAGOPALA AYYANGAR, J.J.)

Income-tax—Commissioner's power of transfer—Statutory provision for consulting the Central Board of Revenue—If mandatory—Transfer of pending and non-pending cases—Patiala Income-tax Act of Samvat 2001 s. 5, sub-ss. (5), (7A), s. 34—Indian Income-tax Act, 1922 (II of 1922), s. 64(1).—Indian Finance Act, 1950 (26 of 1950), s. 13.

The appellant firm which carried on business as forest lessees and timber merchants in the former Kapurthala State was assessed to, and paid, income tax, for the account year 1945-46 under the Income-tax law which was then in force in the said State. Subsequently Kapurthala State integrated into what was known as Pepsu and the Patiala Income-tax Act, 2001, was made applicable and came into force in the integrated State. Later still the Indian Finance Act, 1950 (26 of 1950), applied the Indian Income-tax Act to Part B States which had emerged as a result of political changes and s. 13 of the Indian Finance Act repealed the Income-tax laws obtaining in Part B States except for the purposes of levy assessment and collection of income-tax and Super-tax relating to the period mentioned therein. On November 4, 1953, the Commissioner of Income-tax, Punjab (1) etc. purporting to act under s. 5, sub-ss. (5) and (7A) of the Indian Income-tax Act ordered the assessment of the appellant firm to be done by the Income-tax Officer, Special Circle, Ambala and not by the Income-tax Officer, B-Ward, Patiala, who would ordinarily be the competent assessing authority for the firm under s. 64 of the Indian Income-tax Act. On March 12, 1953, the Income-tax Officer, Special Circle, Ambala, issued a notice purporting to be under the Patiala Income-tax Act of Samvat 2001 to the appellant firm for filing a return of its income and total world income as he believed that the income had been underassessed. The appellant then filed an application under Art. 226 of the Constitution in the High Court for writs of prohibition, certiorari, quo warranto etc. against the Income-tax Officer, Special Circle, Ambala, and the Commissioner of Income-tax, Punjab (1) etc. regarding the reassessment of the income of the firm for the account year 1945-46. The High Court dismissed the said petition and this appeal was filed on a certificate granted by the High Court. The contentions of the appellant inter alia, were that the Income-tax Officer, Special Circle, Ambala, had no jurisdiction to issue a notice under s. 34

1960

September 27.

of the Patiala Income-tax Act of Samvat 2001, and that only the Income-tax Officer, B-Ward, Patiala, was the competent authority as he was the locally situated Income-tax Officer and would have jurisdiction under s. 64(1) of the Income-tax Act. The transfer of the case by the Commissioner of Income-tax by his order of November 4, 1954, was characterised as *ultra vires* and incompetent. The argument that the words of s. 13 of the Indian Finance Act, 1950, did not include reassessment was abandoned in view of the decisions of this Court in *Lakshmana Shenoy v. The Income-tax Officer, Ernakulam*, [1959] S.C.R. 751. It was further contended that the Commissioner in acting under s. 5(5) of the Patiala Income-tax Act was required to consult the Minister-in-Charge whose place was taken by the Central Board of Revenue under the Indian Finance Act, 1950.

Held, that although the Commissioner of Income-tax was required to consult the Central Board of Revenue his failure to do so did not render his order ineffective however wrong it might be from the administrative point of view. The provision about consultation must be treated as directory and the Commissioner's power could not be questioned by the assessee on the ground of failure to consult the Central Board of Revenue.

State of U.P. v. Manbohan Lal Srivastava, [1958] S.C.R. 553, *K. S. Srinivasan v. Union of India*, [1958] S.C.R. 1295, *Montreal Street Railway Company v. Normandin*, L.R. 1917 A.C. 170 and *Biswanath Khemka v. The King Emperor*, (1945) F.C.R. 99, followed.

The Commissioner while transferring the case may have referred to the Indian Income-tax Act and not to the Patiala Income-tax Act but the exercise of the power would be referable to a jurisdiction which conferred validity upon it and not to a jurisdiction under which it would be nugatory.

Pitamber Vajirshet v. Dhandu Navlapa, I.L.R. 12 Bom. 486, followed.

A case which was not pending at the time of transfer could not be transferred under sub-s. (7A) of s. 5 of the Patiala Act but it could be transferred from one Income-tax Officer to another under sub-s. (5) of s. 5 of the Patiala Act which was kept alive for assessment and reassessment relating to previous years. Sub-s. (7A) makes special provision for transfer of pending cases and is not prejudicial to the general powers granted by sub-s. (5).

Bidi Supply Co. v. Union of India, [1956] S.C.R. 267, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal
No. 135 of 1958.

Appeal from the judgment and order dated

1960

L. Hazari Mal
Kuthjiala
v.
The Income-tax
Officer, Special
Circle, Ambala
Cantt.

1960

L. Hazari Mal
Kuthiala

v.

The Income-tax
Officer, Special
Circle, Ambala
Can't.

September 4, 1956, of the Punjab High Court in Civil Writ Case No. 325 of 1955.

N. A. Palkhivala and J. B. Dadachanji, for the appellant.

C. K. Daphtary, Solicitor-General of India, K. N. Rajagopal Sastri and D. Gupta, for the respondents.

1960. September 27. The Judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH J.—The appellant firm, L. Hazari-mal Kuthiala of Kapurthala, moved the High Court of Punjab under Art. 226 of the Constitution for writs of prohibition, *certiorari*, *quo warranto* etc., against the Income-tax Officer, Special Circle, Ambala and the Commissioner of Income-tax, Punjab (1), Himachal Pradesh, Bilaspur and Simla in respect of reassessment of the income of the firm for the account year, 1945-1946. The High Court dismissed the petition, but granted a certificate under Arts. 132 and 133 of the Constitution, and this appeal has been filed on that certificate.

The firm carried on business as forest lessees and timber merchants at Dhilwan in the former Kapurthala State: In that State, an Income-tax law was in force, and prior to the integration of the State, on April 10, 1947, the income of the firm for the account year 1945-1946 (Samvat. 2002) was duly assessed, and the tax was also paid. Subsequently, political changes took place, Kapurthala integrated into what was known as Pepsu, and the Rajpramukh issued two Ordinances in Samvat. 2005, by which all laws in force in Kapurthala including the Income-tax law ceased to be operative from August 20, 1948. The two Ordinances instead applied laws in force in the Patiala State to the area of the new State which included Kapurthala, and the Patiala Income-tax Act, 2001, came into force. Later still, the Indian Finance Act, 1950 (26 of 1950), applied the Indian Income-tax Act to the Part B States, which had emerged as a result of political changes. Section 13 of the Indian Finance Act, 1950, repealed the Income-tax laws obtaining in the area of the Part B States except for the purposes

of levy, assessment and collection of income-tax and super-tax in respect of the period defined therein.

On March 12, 1955, the Income-tax Officer, Special Circle, Ambala, issued a notice purporting to be under s. 34 of the Patiala Income-tax Act of Samvat. 2001 to the appellant firm calling upon it to file a return of its income and total world income, because he had reason to believe that the income had been under-assessed. Previous to this, on November 4, 1953, the Commissioner of Income-tax, Punjab (1), Himachal Pradesh, Bilaspur and Simla, purporting to act under s. 5, sub-ss. (5) and (7A) of the Indian Income-tax Act, ordered that the assessment of the appellant firm would be done by the Income-tax Officer, Special Circle, Ambala and not by the Income-tax Officer, B-Ward, Patiala, who ordinarily would be the competent authority under s. 64 of the Indian Income-tax Act to assess the appellant firm. The appellant firm raised objections, but failed, and then filed the petition under Art. 226 of the Constitution, out of which the present appeal arises.

Numerous objections were taken in respect of the competency of the proceedings before the taxing authorities, but some of them are no longer pressed. An argument under Art. 14 of the Constitution has now been abandoned, though it figured at earlier stages of the present case. A second point that the reassessment cannot be made under the Patiala Income-tax Act is not in dispute, because the respondents before us stated that the reassessment, if any, would have to be done in accordance with the Kapurthala law, as it existed in the assessment year (Samvat. 2002). A third argument, namely, that the words of s. 13 of the Indian Finance Act, 1950, did not include reassessment, has also been abandoned, in view of the decisions of this Court in *Latshmana Shenoy v. The Income-tax Officer, Ernakulam* (1) and *The Income-tax Officer, Bangalore v. K. N. Guruswamy* (2). Only one point has been pressed before us, and it is that the Income-Tax Officer, Special Circle, Ambala, had no jurisdiction to issue a notice under s. 34, and

(1) [1959] S.C.R. 751.

(2) [1959] S.C.R. 785.

1960

L. Hazari Mal
Kuthiala
v.

The Income-tax
Officer, Special
Circle, Ambala
Cantt.

Hidayatullah J.

1960

L. Hazari Mal
Kuthiala

v.

The Income-tax
Officer, Special
Circle, Ambala
Cantt.

Hidayatullah J.

that only the Income-tax Officer, B-Ward, Patiala, was the competent authority. Reliance is placed in this connection upon the provisions of s. 64(1) of the Indian Income-tax Act, under which the locally situated Income-tax Officer would have had jurisdiction in this case. The transfer of the case by the Commissioner of Income-tax by his order dated November 4, 1953, is characterised as *ultra vires* and incompetent, and it is this argument alone to which we need address ourselves in this appeal.

The Patiala Income-tax Act contained provisions almost similar to ss. 5(5) and 5(7A) of the Indian Income-tax Act. Sub-section (5) differed in this that the Commissioner of Income-tax was required to consult the Minister-in-charge before taking action under that sub-section. The only substantial difference in the latter sub-section was that the Explanation which was added to s. 5(7A) of the Indian Income-tax Act as a result of the decision of this Court in *Bidi Supply Co. v. Union of India* (1) did not find place in the Patiala Act. The Commissioner, when he transferred this case, referred not to the Patiala Income-tax Act, but to the Indian Income-tax Act, and it is contended that if the Patiala Income-tax Act was in force for purposes of reassessment, action should have been taken under that Act and not the Indian Income-tax Act. This argument, however, loses point, because the exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle is well-settled. See *Pitamber Vajirshet v. Dhandu Navlapa*(2).

The difficulty however, does not end there. The Commissioner, in acting under s. 5(5) of the Patiala Income-tax Act, was required to consult the Minister-in-charge. It is contended that the Central Board of Revenue which, under the Indian Finance Act, 1950, takes the place of the Minister-in-charge was not consulted, and proof against the presumption of regularity of official acts is said to be furnished by the fact that under the Indian law no such consultation was necessary, and the Commissioner, having purported

(1) [1956] S.C.R. 267.

(2) I.L.R. 12 Bom. 486, 489.

to act under the Indian law, could not have felt the need of consultation with any higher authority. This, perhaps, is correct. If the Commissioner did not act under the Patiala law at all, which enjoined consultation with the Minister-in-charge and purported to act only under the Indian law, his mind would not be drawn to the need for consultation with the Central Board of Revenue. Even so, we do not think that the failure to consult the Central Board of Revenue renders the order of the Commissioner ineffective. The provision about consultation must be treated as directory, on the principles accepted by this Court in *State of U. P. v. Mamodhan Lal Srivastava* (1) and *K. S. Srinivasan v. Union of India* (2). In the former case, this Court dealt with the provisions of Art. 320(3)(c) of the Constitution, under which consultation with the Union Public Service Commission was necessary. This Court relied upon the decision of the Privy Council in *Montreal Street Railway Company v. Normandin* (3), where it was observed as follows:

“.....The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th Ed., p. 596 and the following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.”

The principle of the Privy Council case was also applied by the Federal Court in *Biswanath Khemka v. The King Emperor* (4), and there, as pointed out by this

(1) [1958] S.C.R. 533.

(3) L.R. 1917 A.C. 170.

(2) [1958] S.C.R. 1295, 1321.

(4) [1945] F.C.R. 99.

1960

L. Hazari Maḥ
Kulhiala
v.

The Income-tax
Officer, Special
Circle, Ambala
Cantt.

Hidayatullah J.

1960

L. Hazari Mal
Kuthiala

v.

The Income-tax
Officer, Special
Circle, Ambala
Cantt.

Hidayatullah J.

Court, the words of the provision were even more emphatic and of a prohibitory character. The essence of the rule is that where consultation has to be made during the performance of a public duty and an omission to do so occurs, the action cannot be regarded as altogether void, and the direction for consultation may be treated as directory and its neglect, as of no consequence to the result. In view of what has been said in these cases, the failure to consult the Central Board of Revenue does not destroy the effectiveness of the order passed by the Commissioner, however wrong it might be from the administrative point of view. The power which the Commissioner had, was entrusted to him, and there was only a duty to consult the Central Board of Revenue. The failure to conform to the duty did not rob the Commissioner of the power which he exercised, and the exercise of the power cannot, therefore, be questioned by the assessee on the ground of failure to consult the Central Board of Revenue, provision regarding which must be regarded as laying down administrative control and as being directory.

Learned counsel, however, contends that even if all this be decided against him, he is still entitled to show that the transfer of the case can only take place under sub-s. (7A) of s. 5 and not under sub-s. (5). According to him, the former sub-section deals with the transfer of individual cases, and that inasmuch as there was no pending case at the time, then, as was ruled by this Court in the *Bidi Supply case* (1), the transfer could not be valid. In the absence of an Explanation similar to the one added to the Indian Income-tax Act, he contends that a case which was not pending, could not be transferred under sub-s. (7A). He contends also that sub-s. (5) deals not with the transfer of individual cases but with the distribution of work.

The two sub-sections of s. 5 of the Patiala Income-tax Act read as follows :

“(5) Income-tax officers shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of

(1) [1956] S.C.R. 267.

such areas as the Commissioner of Income-tax may in consultation with the Minister Incharge direct, and, where such directions have assigned to two or more Income-tax Officers, the same persons or classes of persons or the same incomes or classes of income or the same area, in accordance with any orders which the Commissioner of Income-tax may in consultation with the Minister Incharge make for the distribution and allocation of work to be performed. The Minister Incharge may, with the previous approval of the Ijlas-i-Khas, by general or special order in writing, direct that the powers conferred on the Income-tax Officer by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Commissioner, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer shall be deemed to be references to the Commissioner.

(7A) The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Minister Incharge may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred."

There can be no doubt that sub-s. (7A) authorises the Commissioner to transfer individual cases. The words "any case from one Income-tax Officer subordinate to him to another", "such transfer may be made at any stage of the proceedings" etc., clearly indicate this. Sub-section (7A) is, however, not applicable here, because in respect of the cognate sub-section of the Indian Income-tax Act it was ruled by this Court that it could apply to a pending case only. It was to overcome this lacuna that the Explanation was added by the Indian Parliament. This amendment came in 1956, and the Patiala Act did not include a similar Explanation, because prior to 1956 the question had not arisen. There is one other difference between the Patiala Act and the Indian Act. Whereas sub-s. (7A) was introduced in the Indian Act by an

1960

*L. Hazari Mal
Kuthiala*

v.

*The Income-tax
Officer, Special
Circle, Ambala
Cantt.*

Hidayatullah J.

1960

L. Hazari Mal
Kuthiala

v.

The Income-tax
Officer, Special
Circle, Ambala
Canal

Hidayatullah J.

amendment, the corresponding sub-section was enacted at the same time as the rest of the Patiala Act.

Now, it is quite clear that a case which was not pending at the time of transfer could not be transferred under sub-s. (7A) of s. 5 of the Patiala Act. The same reasoning must be applied to that sub-section, as it was applied to the Indian Act. Learned counsel referred us to an affidavit by the Under Secretary, Central Board of Revenue, reproduced in *Pannalal Binjraj v. Union of India*⁽¹⁾, which stated the reason for the introduction of sub-s. (7A). It is a little difficult to accept the affidavit as an aid to find out the intention why a particular law or amendment was enacted, more so where the affidavit concerns quite another Act of a different legislature. It is, however, pertinent to remember that sub-s. (7A) expressly gave the power to transfer *pending* cases, but said nothing about cases which were not pending. The power to transfer such cases before they came into being must, therefore, be found in some other enactment. The Department contends that it would fall within sub-s. (5) of s. 5, and points out that this Court was not required to consider that sub-section, because the transfer of the cases dealt with in the *Bidi Supply case*⁽²⁾ was by an authority not named in sub-s. (5) and therefore the transfer in those instances could not be held to be under that sub-section. The Department contends that the Commissioner of Income-tax is mentioned both in sub-s. (5) and sub-s. (7A) and could derive his power from one or the other or both.

The short question thus is whether an individual case which was not a pending case could be transferred from one Income-tax Officer to another under sub-s. (5) of s. 5 of the Patiala Act, which was kept alive for assessment and reassessments relating to previous assessment years. Mr. Palkhivala argues that the words of the sub-section "such persons or classes of persons or of such incomes or classes of income or in respect of such areas" denote, by the plural employed, a dealing with a group rather than

(1) [1957] S.C.R. 233, 240.

(2) [1956] S.C.R. 267.

an individual case. He further contends that if individual cases were held to be included in sub-s. (5), then sub-s. (7A) would be unnecessary and otiose. He argues that harmonious construction thus requires that the two sub-sections must be taken to cover different situations.

The last argument is hardly open after the decision of this Court adverted to already. If pending cases alone were within sub-s. (7A), those cases which were not pending could not be said to have been provided for, there. There is thus no overlapping at least in so far as cases not pending were concerned. An arrangement for their disposal would be a subject of distribution of work and nothing much turns upon the employment of the plural number, because the plural includes the singular. Indeed, a single case might well be in a class separate from others. Duplication of powers is sometimes noticeable in statutes, and does not destroy the effectiveness of the powers conferred. Section 24 of the Civil Procedure Code dealing with transfers of cases and the provisions of the Letters Patent of the High Court are instances in point. If a particular action is valid under one section, it cannot be rendered invalid because the identical action can also be taken under another section, and it makes no difference if the two empowering provisions are in the same statute. In any event, sub-s. (7A) would cut down sub-s. (5) only to the extent the former provides, and it has been held that it was confined to pending cases only. Sub-section (5) was thus available for cases which were not pending, and the case which was the subject-matter of the Commissioner's order was not a pending case.

Mr. Palkhivala contends that sub-s. (5) merely enables distribution of work, and does not deal with transfers. But where a case is not pending, an order relating to it may take the form of transfer or an arrangement for its disposal. There is nothing to prevent the Commissioner, acting under sub-s. (5), to arrange that the case of an assessee shall be disposed of by a particular Income-tax Officer. The words of

1960

*L. Hazari Mal
Kuthiala*

v.

*The Income-tax
Officer, Special
Circle, Ambala
Cantt.*

Hidayatullah J.

1960

L. Hazari Mal
Kathiulu

v.

The Income-tax
Officer, Special
Circle, Ambala
Cantl.

Hidayatullah J

sub-s. (5) that "Income-tax Officers shall perform their functions in respect of such persons.....as the Commissioner.....may.....direct" only show that the Commissioner may direct that one Income-tax Officer shall not and another Income-tax Officer shall, perform the functions in respect of such and such person or persons. The plural including the singular, the order of the Commissioner was valid, because he arranged and distributed work, and did not seek to transfer any case. It is, however, contended that this renders sub-s. (7A) otiose. In our opinion, it does not. Special provision for transfer of pending cases is all that is provided there, and if such a transfer takes place, the provisions of sub-s. (7A) will be invoked. Those provisions are to be read as not prejudicing the general powers granted by sub-s. (5) and *vice versa*.

For these reasons, the appeal fails, and will be dismissed with costs.

Appeal dismissed.

1960

September 27.

BURMAH SHELL OIL STORAGE AND
DISTRIBUTING CO., OF INDIA, LTD., AND
ANOTHER

v.

THE COMMERCIAL TAX OFFICER AND
OTHERS

(AND CONNECTED APPEAL)

(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA,
J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

Sales Tax—Sale of motor spirit for aviation purposes to aircraft at Airport—Exemption from taxation—Sale outside customs barrier—Whether sale within State—Aviation spirit loaded on board aircraft taken out of country—If exported—"Export", meaning of—Bengal Motor Spirit Sales Taxation Act, 1941 (Ben. 5 of 1941), s. 22, as amended—Constitution of India, Art. 286(1)(a)(b), Explanation.