

The State
v.
Gurdial
Singh Gill
and others

Gurdev Singh,
J.

Shri Jagdish Singh shall pay Rs. 100 each as fine or in default suffer one month's simple imprisonment.

In the other case under sections 169/162, Gurdial Singh shall pay Rs. 100 as fine or in default undergo one month's simple imprisonment and the other three Respondents a fine of Rs. 50 each in default of which they shall suffer simple imprisonment for 15 days. On realization of the fine the Complainant shall be paid Rs. 100 in the first case and Rs. 50 in the later as compensation.

Before closing I would like to point out that the learned Additional District Magistrate did not pass any order with regard to the Company (Messrs Malwa Agricultural Society, Ltd.), that had been impleaded as accused in both the cases. Since the conviction of this Company has not been recorded by the Magistrate, his order in both the cases is tantamount to acquittal of the Company. In view of the admission of guilt by all the Directors of the Company, including the Managing Director who represented Messrs Malwa Agricultural Society, Ltd., the proper course for the Magistrate was to convict the Company as well, but since the State has not appealed against the Company, nor impleaded it as a respondent, there is no question of our recording its conviction, though we feel that the acquittal of the Company by the Magistrate was wrong.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before S. S. Dulat and Prem Chand Pandit, JJ.

BELI RAM *alias* BELI MAL AND ANOTHER.—*Petitioners.*

versus

THE ASSESSING AUTHORITY AND TREASURY
OFFICER, AMRITSAR AND ANOTHER,—*Respondents.*

Civil Writ No. 393 of 1960.

*Punjab Professions, Trades, Callings and Employments
Taxation Act (VII of 1956)—Section 5—Taxable gross
annual income—Computation of—Income derived from
professions, trades, callings and employments outside the
State—Whether to be included.*

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August, 19th

Held, that the intention of the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956, 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". The expression "gross" is meant to distinguish it from net income from various trades, professions, callings and employments. Considering the language of the Act in its 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 from a profession, trade, calling or employment carried on outside the State of Punjab. The view 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.

Petition under Articles 226 and 227 of the Constitution of India praying that a suitable writ be issued quashing the notices, dated the 12th January, 1960, issued to the petitioners by respondent No. 1.

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

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondents.

ORDER

DULAT, J.—These fourteen writ petitions (Civil Writs Nos. 393, 397, 425, 436, 437, 438, 439, 442, 445, 446, 447, 480, 499 and 500 of 1960), under Articles

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226 and 227 of the Constitution turn on a single question of law concerning the interpretation of the Punjab Professions, Trades, Callings and Employments Taxation Act (7 of 1956). This Act imposes a tax on every person carrying on a trade or following a profession or calling, or who is in employment either wholly or in part, within the State of Punjab, and the tax is leviable "in respect of such profession, trade, calling or employment". Section 5 of the Act says—

"The tax payable by any person under this Act shall be determined with reference to his total gross income during the previous year."

and "total gross income" is defined in the Act as "aggregate of income derived from various professions, trades, callings and employments." The rate of tax is specified in the Schedule which runs thus—

<i>"Rate of tax</i>	<i>Amount of tax</i>
	Rs.

Where the total gross annual income—

(1) exceeds Rs. 6,000, but does not exceed Rs. 8,500	... 120
(2) * * *	... *
(3) * * *	... *
(4) Exceeds Rs. 25,000	... 250"

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 petitioners, according to their allegations, are carrying on certain trades within the State of Punjab, but, at the same time, claim to be carrying on trade outside the State, and their case is that for determining the amount of tax payable by them the assessing authority in the Punjab is not entitled to consider the income in respect of the trade or calling carried on outside the State. In reply to this, it is said on behalf of the assessing authorities 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". It appears that previously income earned outside the Punjab was excluded while computing the rate of tax, but recently the assessing authorities have been advised that this is not correct and the gross income, whether earned in the Punjab or outside the State of Punjab, is to be taken into account. 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

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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."

Mr. Doabia for the respondents depended largely on the use of the expression "total gross income" in section 5 of the Act, but its definition in the Act itself makes it clear that the expression "gross" is meant to distinguish it from net income from various trades, professions, callings, etc. It cannot, of course, be suggested that for computing the rate of tax the total gross income of a person, carrying on a profession, trade, calling or employment within the State of Punjab, is to be taken into account, and admittedly it is only the total gross income from a profession, and a trade, and a calling, and an employment, that is to be considered, leaving other sources of income aside. Similarly, 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. The ordinary rule admittedly is that in construing a taxing statute the bias should be in favour of the person taxed, and authority to impose a tax must be clearly found in the words of the Statute, as observed by the Supreme Court in *A. V. Fernandez v. The State of Kerala* (1). 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 trade, 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

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

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.

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Mr. Doabia pointed out that even in the case of the present petitioners it may turn out that the gross income sought to be excluded has, in fact, arisen out of professions or trades or callings or employments within the State of Punjab, and that we should not shut out an enquiry into the matter. It is, of course, not our intention to do anything of the kind, for all we are deciding is a question of law, and every question of fact arising in the case of any particular assessee must be determined by the assessing authority.

The petitioners will get their costs in this Court.

PANDIT, J.— I agree.

Pandit, J.

B.R.T.

APPELLATE CIVIL.

Before Inder Dev Dua, J.

THE DELHI MUNICIPAL COMMITTEE,—Appellant.

versus

BHAGWAN DASS,—Respondent.

Regular Second Appeal No. 28-D of 1956.

Code of Civil Procedure (V of 1908)—Section 9—Suit for an injunction restraining the municipal committee from realising house-tax on the ground that its levy was wholly illegal—Whether competent—Punjab Municipal Act (III of 1911)—Sections 65 and 215—Failure to serve notice—Whether vitiates the levy of tax—Bye-laws of Delhi Municipal Committee, Part II, Rules and Directions, Chapter

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August, 25th