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Court : Karnataka

Decided On : Aug-12-1988

Reported in : AIR1989Kant204

Judge : S.R. Rajasekhar, J.

Acts : Trades Callings and Employments Act, 1976 - Sections 2, 3 and 9; Income-tax Act, 1961 - Sections 15 and 89

Appeal No. : Writ Petn. No. 20116 of 1984

Appellant : Karnataka Bank Ltd. and anr.

Respondent : The Assistant Profession Tax Officer, Mangalore

Advocate for Def. : H.L. Dew, Govt. Pleader

Advocate for Pet/Ap. : S.S. Naganand, Adv.

Judgement :

ORDER

1. The first petitioner, Bank, has registered itself as an employer under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 (Karnataka Act No. 35 of 1976) ('The Act' for short).

2. The second petitioner is an employee who is liable to pay professional tax under the Act and has therefore enrolled himself with the Professional Tax Officer as, required by S 5(2) of the Act.

3. The Bank submitted its return as prescribed under the Act and the Rules and deducted professional tax, payable by its, employees, including the second petitioner from time to time, from the salary bill for each month.

4. In Aug. 1979 there was a settlement between the Indian Banks Association and the All India Bank Employees Association and the National Confederation of Bank employees. According to the said settlement, the first petitioner, Bank, and its employees agreed to revise the emoluments payable to the employees of the bank with effect from 1-8-78, and accordingly the arrears of emoluments payable to the employees for the back period of one year, i.e., from 1-8-78 to 31-7-79 was paid in lump sum during December 1979.

5. For the month of Dec., 1979, the Bank filed its monthly return and deducted the professional tax for the month of Dec., 1979, from its employees in accordance with the rates prescribed for each class in Entry I referred to in the Schedule to the Act. The Bank included the arrears of salary also in the salary paid for the month of Dec., 1979, and on the aggregate, professional tax at the prescribed rate was deducted.

6. The Respondent, who is the Profession Tax Officer, issued a proposition notice on 12-7-84 proposing to reject the return filed by the Bank and to levy professional tax for each month from 1-8-78 to 31-7-79 and to determine the tax on the revised salary proportionately for each month, and further proposed to deduct the total tax so calculated for each month on the basis of the revised salary, in the salary bill for the month of Dec., 1979.

7. The Bank filed its reply to the said notice and opposed the levy on each month and to deduct arrears of tax in one lump sum in the salary bill for, Dec I 1979. The Bank contended in the reply that under the Act what was permitted to be levied it the tax on the salary for the month 'paid on regular basis' and also on the ground that the definition of salary in the Act does not include 'arrears of salary'.

8. The Respondent did not agree with the said contention of the Bank and passed an order on 18-8 - 84 deducting the arrears of tax calculated on the basis of the revised salary as short-payment or differential tax. As a result of the said order, deduction was made in the salary bill of each employee for the month of Dec. 1979 towards the difference of, tax on the revised salary. This order was thus made applicable to all the employees of the Bank who had enrolled themselves under the Act. This order is challenged in this writ petition by the Bank on various grounds.

9. It is contended by Sri Naganand, learned Counsel for the petitioner that the expression, salary as defined in the Act, includes only the pay received by the employee on regular basis' as per S. 2(j) of the Act. The charging section - S. 3 provides for levy and collection of provisional tax at the rates specified in the second column of the schedule based on the salary of the employee. It is also the contention of the Bank that the expression, 'salary' does not include the arrears of salary and that there is no machinery provided in the Act to bring to charge, the arrears of salary.

10. It is argued on behalf of the respondent by the learned Government Pleader that the definition 'salary' includes the arrears of salary also and the enhanced salary received by each employee with retrospective effect from 1-8-79 should be understood as a. salary received on regular basis. It is also argued that the revision of salary being a result of agreement between the Bank and its employees, the terms of which were incorporated in an award, it is not open to the employees to contend that-their salary which was revised with effect from 1-8-78 should not include the arrears of salary for purposes of paying the difference of profession tax.

11. Elaborating 'the arguments the learned Counsel for the petitioner submitted that the additional tax imposed should fail because there is no charge created under the Act nor is there any machinery provided to rectify the assessment once made Neither of the provisions contained in Sec. 8.and 9 of the Act can support the impugned levy. It is also argued that the Court while construing a taxing statute is guided by the rule of strict construction and any charge upon the subject must

be imposed by clear and unambiguous, language. (See Maxwell on Interpretation of statutes 12th Edition page 256). Sri Naganandhas also relied upon the observations of Lord. Simonds in *Inland Revenue Commr v. Wolfson* (1949) 1 All ER 865 at p. 868),

'It is not the function of a Court of law to give to the words a strained and unnatural meaning because only thus will a taxing section apply to a transaction which, had the Legislature thought of it, would have been covered by the appropriate words,'

12. It is, therefore, argued that the levy must fail on account of the definition of salary under which the tax is levied on the salary for the month paid on regular basis and the definition does not include the arrears of salary.

13. The order proposing the levy of tax on the arrears of salary is sought to be justified by Sri Dattu, learned HCGP, by deriving support from the definition of 'arrears' from the. Law Lexicon by Ramanath Iyer.

'Arrears. Money not paid on the due date or proper time for payment (as) arrears of rent (Connell) That which is behind in payment, or which remains unpaid though due.

The definition, of 'arrears' involves the idea not merely of money unpaid, but of money unpaid at the due time. The term 'arrears' involves the existence of some default on the part of the debtor'.

14. It is argued that the difference of salary is calculated for 14 months from Sept., 1978 to Oct., 79 and the difference for each month which is sought to be recovered from the employees is not the arrears of salary but only difference of salary. It is further argued that S 2(j) is comprehensive enough to bringing to charge the difference of salary read with S. 9 under which rectification could have been done in respect of such arrears of salary as having escaped assessment. It is, therefore, argued for the respondent that the, levy is perfectly valid in law.

15. I have carefully considered the arguments of the learned Counsel for the petitioners and the learned Government Pleader for the State.

16. The question that arises for decision on the facts of the case is :

(i) whether the arrears of salary are covered by the definition of 'Salary' within the meaning of the term, as defined in S. 2(j) of Act; and,

(ii) whether the levy of professional tax on the arrears of salary for each month from Sept., 1978 to Oct., 1979 can be sustained in law?

17. On a perusal of the scheme of the Act, the charging section, the definition of salary or wage and the schedule to the Act, it can be seen that professional tax is levied and collected on the basic salary or wage received by any person 'on regular basis', whether in cash or kind and calculated on the basis of the amount of salary drawn for a month and at the rates specified in the schedule.

18. What is a salary or wage received on 'regular basis' according to its definition has to be understood as a salary sewage paid and received for each month. The difference of salary on account of enhancement of salary with retrospective effect, as per the terms of the settlement, is no sought to be taxed at a higher rate under the entry 1(b) of the schedule. The difference of tax is levied because of the enhancement of salary for each month with retrospective effect.

19. What emerges from a reading, of these provisions is that, under the charging section read with schedule, the Legislature intended to levy the profession tax on the basic salary or wage received by any person on regular basis, which means whatever-salary is received by a person- each month. The definition of salary or wage does not include arrears salary.

20. 'Salary' is defined under the Income tax Act as follows :

'Section 15. The following income shall be chargeable to income-tax under the head 'Salaries'

(a) any salary due from an employer or a former employer to an assesses in the previous year, whether paid or not;

(b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year'.

21. The Income-tax Act has also made provision for relief from salary etc., paid in arrears or in advance. (See S. 89 and R. 21A).

22. When we make a study of the provisions of the Income-tax Act in contrast with the Profession Tax Act, what is significantly seen is, the Legislature has provided for the levy of income-tax on arrears of income also, whenever received by an income-tax assessee with the necessary relief as prescribed under the Rules which provide for the spread-over of the income to the period for which the arrears is paid and received.

23. Nothing was easier than to amend the definition of salary or wage in the Profession tax Act in order that tax could be levied on arrears of salary received as a result of the settlement as in this case and to meet similar contingencies.

24. Sri Dattu, the learned High Court Government Pleader took time to consult the Department, if any such amendment could be thought of or suggested in order to meet, the situation like the present one and to obviate any chance of losing the revenue'- on this, count. Sri Dattu reported he was helpless in the matter and he was not able to persuade the Government to bring about an amendment to the definition of salary.

25 The argument of the learned Counsel,, for the petitioners, that, in the absence of a charge under the Act to tax arrears of salary (in addition to the salary paid on regular basis for a month), and the want of machinery provided to meet such a situation, no tax on arrears of salary can be levied, is sound and deserves, to be accepted.

26. In the result, the writ petition is allowed and the assessment for the month of Dec, 1979 made under S. 7(2)(c) of the Act on the Employer - Bank (Annexure C), in so far as it relates to the difference of tax computed there under with retrospective effect from 18-1978 to 31-9-1979, is quashed.

27. As a consequence of this order, the Second-petitioner is entitled to the refund of the excess tax collected or adjustment for the tax to be paid in future.

28. Since the writ petition is filed by both the employer and one of its employees, and as a result of this order declaring that the arrears of salary do not form part of the salary paid to its employees, this order shall hold good and be enforceable by each one of the employees, both against the first petitioner Bank and against the concerned-Professional Tax Officer.

29. This result follows as an inevitable consequence of the declaration made in this order.

30. Petition allowed.

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