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case of this kind is given to the Minister-in-charge under r. 21. The definitions therefore of "Government" and "the State Government" in the Rajasthan General Clauses Act are of no help to the respondent once it is held that r. 31 (vii) (a) of the Business Rules when it speaks of "compulsory retiring of any officer" refers only to compulsory retirement as a penalty under r. 14 of the Classification Rules and not to the two other kinds of retirement (namely, superannuation under r. 56 or retirement under r. 244 (2) of the service Rules).

The appeal is therefore allowed and the order of the High Court set aside. In the circumstances we pass no order as to costs.

Appeal allowed.

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January, 25.

FIRM AND ILLURI SUBBAYYA CHETTY AND SONS

v.

THE STATE OF ANDHRA PRADESH

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Civil Court—Jurisdiction—Exclusion of—"Any assessment made under this Act" meaning of—Scope of—Madras General Sales Tax Act, 1939 (Mad. 9 of 1939), s. 18-A.

The appellant filed a suit against the respondent for a decree for Rs. 8339/- on the ground that the said amount had been illegally recovered from it under the Madras General Sales Tax Act, 1939, for the years 1952-54. The respondent

resisted the claim on the ground that the suit was incompetent under s. 18-A of the Act. On the merits, it was contended that the transactions in regard to groundnuts on which sales tax was levied and recovered from the appellant were transactions of purchase and not of sale, and it was urged that the appellant having voluntarily made the return and paid the taxes, it was not open to it to contend that the transactions were not taxable under the Act. Besides it was argued that the appellant had not preferred an appeal either to the Deputy Commissioner of Commercial Taxes or to the Sales Tax Appellate Tribunal against the assessments and hence the suit was not maintainable. The suit was decreed by the trial court but the High Court reversed that decision and dismissed the suit on the ground that in view of the provisions of s. 18-A of the Act, the suit was incompetent. Alternatively, it was found on merits that the claim made by the appellant was not justified. The appellant came to this Court by special leave.

Held, that s. 18-A excludes the jurisdiction of Civil Courts to set aside or modify any assessment made under the Act. There is no express provision in the Act under which the suit can be said to have been filed and it falls under the prohibition contained in this section. The prohibition is express and unambiguous and no suit can be entertained by a Civil Court, if by instituting the suit, the plaintiff wants to set aside or modify any assessment made under the Act. Where an order of assessment has been made by an appropriate authority under the provisions of the Act, any challenge to its correctness and any attempt either to have it set aside or modified must be made before the appellate or revisional forum prescribed by the relevant provisions of the Act. A suit instituted for that purpose is barred under s. 18-A.

When the appellant made its voluntary returns and paid the tax in advance to be adjusted at the end of the year from time to time, it treated the groundnut transactions as taxable. The appellant having conceded the taxable character of the transactions in question, no occasion arose for the taxing authorities to consider whether the said transactions could be taxed or not. Even after the impugned orders of assessment were made, the appellant did not choose to file an appeal and urge before the appellate authority that the transactions were sale transactions and as such were outside the purview of s. 5A (2). If an order made by a taxing authority under the relevant provisions of the Act in a case where the taxable character of a transaction is disputed, is final and cannot be challenged in a civil court by a separate suit, the position is just

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the same where the taxable character of the transactions is not even disputed by the dealer who accepts the order for the purposes of the Act and then institutes a suit to set aside or modify it.

The expression "any assessment made under this Act" is wide enough to cover all assessments made by the appropriate authorities under this Act whether the said assessments are correct or not. It is the activity of the assessing officer acting as such officer which is intended to be projected and as soon as it is shown that exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment, that clearly falls within the scope of s. 18-A. The fact that the order passed by the assessing authority may in fact be incorrect or wrong does not affect the position that in law the said order has been passed by an appropriate authority and the assessment made by it must be treated as made under this Act. Whether or not an assessment has been made under this Act will not depend on the correctness or accuracy of the order passed by the assessing authority.

There is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from him illegally and such a remedy could be held to be barred only on very clear and unmistakable indications to the contrary. The exclusion of jurisdiction of civil courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to the effect or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the civil courts to deal with a case brought before it in respect of some of the matters covered by the said statute.

There is no justification for the assumption that if a decision has been made by a taxing authority under the provisions of a taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on merits and as such it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute must be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. If an appropriate authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceedings illegal and void and that infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the

defect or infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute.

Secretary of State v. *Mask & Co.*, (1940) 67 I.A. 222 and *Reliegh Investment Co. Ltd.* v. *Governor General in Council*, (1947) 74 I.A. 50, relied on.

State of Andhra Pradesh v. *Sri Krishna Coconut Co.* (1960) 1 Andhra W.R. 279, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 315 of 1962.

Appeal by special leave from the judgment and order dated November 16, 1960 of the Andhra Pradesh High Court in A.S.No. 397 of 1957.

A. Ranganadham Chetty, A. Vedavalli and *A. V. Rangam,* for the appellant.

D. Narasaraju, Advocate-General for the State of Andhra Pradesh, T.V.R. Tatachari and *P.D. Menon,* for the respondent.

1963. January 25. The Judgment of the Court was delivered by

Gajendragadkar, J.

GAJENDRAGADKAR, J.—The short question which arises in this appeal is whether the suit instituted by the appellant, Firm of Illury Subbayya Chetty & Sons, in the court of the Subordinate Judge at Kurnool, seeking to recover Rs. 8,349/- from the respondent, the State of Andhra Pradesh, on the ground that the said amount had been illegally recovered from it under the Madras General Sales Tax Act, 1939 (Mad. IX of 1939) (hereinafter called the Act) for the years 1952-54 is competent or not ; and this question has to be determined in the light of the scope and effect of section 18-A of the Act.

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The appellant is a firm of merchants carrying on commission agency and other business at Kurnool and as such, it purchases and sells ground-nuts and other goods on behalf of principles for commission. For the year 1952-53 the Sales-tax authorities included in the appellant's taxable turnover an amount of Rs. 3,45,488/12/10 representing groundnut sales and collected the tax on the total turnover from it in September, 1953 when the amount of the said tax was determined and duly adjusted. The said turnover of Rs. 3,45,488/12/10 in fact represented sales of groundnuts and not purchases and tax was recovered from the appellant on the said amount illegally inasmuch as it is only on purchase of groundnuts that the tax is leviable. As a result of this illegal levy, the appellant had to pay Rs. 5,398/4/3 for the said year. Similarly, for the subsequent year 1953-1954 the appellant had to pay an illegal tax of Rs. 1,159/11/9. In its plaint, the appellant claimed to recover this amount together with interest @ 12% per annum and that is how the claim was valued at Rs. 8,349/-.

This claim was resisted by the respondent on two grounds. It was urged that the suit was incompetent having regard to the provisions of s. 18-A of the Act; and on the merits it was alleged that the transactions in regard to groundnuts on which sales-tax was levied and recovered from the appellant were transactions of purchase and not of sale. In this connection, the respondent referred to the fact that the appellant itself had included the transaction in question in the return submitted by it in form A and that it was making payments tentatively every month to be adjusted after the final assessment was made at the end of the year. Accordingly, the final adjustment was made in September and the total amount due from the appellant duly recovered. Thus, the appellant having voluntarily made the return and paid the taxes, it was not open to him to

contend that the transactions in regard to groundnuts were not taxable under the Act. Besides, the appellant had not preferred an appeal either to the Deputy Commissioner of Commercial Taxes or to the Sales Tax Appellate Tribunal; and so, it had not availed itself of remedies provided by the Act.

On these pleadings, the trial Court framed three principal issues. The first issue was whether the suit was barred by s. 18-A of the Act; the second was whether there had been excess collection of sales tax for the two years in question and if so, how much? And the third issue was whether the appellant was estopped from questioning the validity of the assessment? According to the trial court, the respondent had failed to prove its pleas against the appellant's claim and so, it recorded findings in favour of the appellant in all the three issues. In the result, a decree followed in favour of the appellant for the recovery of Rs. 6,558/- with interest @ 6% per annum from November 12, 1955 till the date of payment.

This decree was challenged by the respondent by preferring an appeal before the High Court of Andhra Pradesh. It appeared that the decision of the said High Court in the case of *State of Andhra Pradesh* v. *Shri Krishna Cocoanut Co.* (1), was in favour of the view taken by the trial Court; but the respondent urged before the High Court that the said decision was erroneous in law and required reconsideration. That is why the respondent's appeal was placed before a Full Bench of the High Court. The Full Bench has upheld the contentions raised by the respondent. It has held that in view of the provisions of s. 18-A of the Act, the suit is incompetent. Alternatively, it has found that on the merits, the claim made by the appellant was not justified. The result of these findings was that the respondent's appeal was allowed and the appellant's suit was dismissed

(1) (1960) 1 Andhra W.R. 279.

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with costs. The appellant had filed cross-objections claiming additional interest on the decretal amount, but since its suit was held to be incompetent by the High Court, its cross-objections failed and were dismissed with costs. It is against this decree that the appellant has come to this Court by special leave.

Mr. Ranganathan Chetty for the appellant contends that the High Court was in error in coming to the conclusion that the appellant's suit was incompetent because he argues that the High Court has misjudged the effect of the provisions of s. 18-A. In dealing with the question whether Civil Courts' jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind the fact that there is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from him illegally and that such a remedy can be held to be barred only on very clear and unmistakable indications to the contrary. The exclusion of the jurisdiction of Civil Courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the civil courts to deal with a case brought before it in respect of some of the matters covered by the said statute.

It is, therefore, necessary to enquire whether s. 18-A expressly or by necessary implication excludes the jurisdiction of the civil court to entertain a suit like the present. Section 18-A provides that no suit or other proceeding shall, except as expressly provided in this Act. be instituted in any Court to set aside or modify any assessment made under this Act. It is common ground that there is no express provision made in the Act under which the present

suit can be said to have been filed, and so, it falls under the prohibition contained in this section. The prohibition is express and unambiguous and there can be no doubt on a fair construction of the section that a suit cannot be entertained by a civil court if, by instituting the suit, the plaintiff wants to set a side or modify any assessment made under this Act. There is therefore, no difficulty in holding that this section excludes the jurisdiction of the civil courts in respect of the suits covered by it.

It is, however, urged by Mr. Chetty that if an order of assessment has been made illegally by the appropriate authority purporting to exercise its powers under the Act, such an assessment cannot be said to be an assessment made under this Act. He contends that the words used are "any assessment made under this Act" and the section does not cover cases of assessment which are purported to have been made under this Act. In support of this argument he has referred us to the provisions of s. 17 (1) and s. 18 where any act done or purporting to be done under this Act is referred to. It would, however, be noticed that having regard to the subject-matter of the provisions contained in ss. 17 (1) and 18 it was obviously necessary to refer not only to acts done, but also to acts purporting to be done under this Act. Section 17 (1) is intended to bar certain proceedings and s. 18 is intended to afford an indemnity and that is the reason why the legislature had to adopt the usual formula by referring to acts done or purporting to be done. It was wholly unnecessary to refer to cases of assessment purporting to have been made under this Act while enacting s. 18-A, because all assessments made under this Act would attract the provisions of s. 18-A and that is all that the legislature intends s. 18-A to cover.

The expression "any assessment made under this Act" is, in our opinion, wide enough to cover all

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assessments made by the appropriate authorities under this Act whether the said assessments are correct or not. It is the activity of the assessing officer acting as such officer which is intended to be protected and as soon as it is shown that exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment that clearly falls within the scope of s.18-A. The fact that the order passed by the assessing authority may in fact be incorrect or wrong does not affect the position that in law, the said order has been passed by an appropriate authority and the assessment made by it must be treated as made under this Act. Whether or not an assessment has been made under this Act will not depend on the correctness or the accuracy of the order passed by the assessing authority. In determining the applicability of s.18-A, the only question to consider is: "Is the assessment sought to be set aside or modified by the suit instituted an assessment made under this Act or not?" It would be extremely anomalous to hold that it is only an accurate and correct order of assessment which falls under s.18-A. Therefore, it seems to us that the orders of assessment challenged by the appellant in its suit fall under s.18-A.

In this connection, it is necssary to emphasise that while providing for a bar to suits in ordinary civil courts in respect of matters covered by s.18-A, the legislature has taken the precaution of safeguarding the citizens' rights by providing for adequate alternative remedies. Section 11 of the Act provides for appeals to such authority as may be prescribed; s.12 confers revisional jurisdiction on the authorities specified by it; s.12-A allows an appeal to the appellate Tribunal; s.12-B provides for a revision by the High Court under the cases specified in it; s.12-C provides for an appeal to the High Court; and s.12-D lays down that petitions, applications and appeals to High Court should be heard by a Bench of not

less than two Judges. The matter can even be brought to this Court by way of a petition under Art. 136 of the Constitution. It would thus be seen that any dealer who is aggrieved by an order of assessment passed in respect of his transactions, can avail himself of the remedies provided in that behalf by these sections of the Act. It is in the light of these elaborate alternative remedies provided by the Act that the scope and effect of s.18-A must be judged. Thus considered, there can be no doubt that where an order of assessment has been made by an appropriate authority the provisions of this Act, any challenge to its correctness and any attempt either to have it set aside or modified must be made before the appellate or the revisional forum prescribed by the relevant provisions of the Act. A suit instituted for that purpose would be barred under s. 18-A.

The facts alleged by the appellant in this case are somewhat unusual. The appellant itself made voluntary returns under the relevant provisions of the Act and included the groundnut transactions as taxable transactions. It was never alleged by the appellant that the said transactions were transactions of sale and as such, not liable to be taxed under the Act. It is true that under s.5A(2) groundnut is made liable to tax under s.3(1) only at the point of the first purchase effected in the State by a dealer who is not exempt from taxation under s. 3(3), but at the rate of 2% on his turnover. When the appellant made its voluntary returns and paid the tax in advance to be adjusted at the end of the year from time to time, it treated the groundnut transactions as taxable under s.5A(2). In other words, the appellant itself having conceded the taxable character of the transactions in question, no occasion arose for the taxing authority to consider whether the said transactions could be taxed or not; and even after the impugned orders of assessment were made, the appellant did not choose to file an appeal and urge

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before the appellate authority that the transactions were sale transactions and as such, were outside the purview of s.5A(2). If the appellant had urged that the said transactions were outside the purview of the Act and the taxing authority in the first instance had rejected that contention, there would be no doubt that the decision of the taxing authority would be final, subject, of course, to the appeals and revisions provided for by the Act. The position of the appellant cannot be any better because it did not raise any such contention in the assessment proceedings under the Act. If the order made by the taxing authority under the relevant provisions of the Act in a case where the taxable character of the transaction is disputed is final and cannot be challenged in a civil court by a separate suit, the position would be just the same where the taxable character of the transaction is not even disputed by the dealer who accepts the order for the purpose of the Act and then institutes a suit to set it aside or to modify it.

The question about the exclusion of the jurisdiction of the civil courts to entertain civil actions by virtue of specific provisions contained in special statutes has been judicially considered on several occasions. We may in this connection refer to two decisions of the Privy Council. In *Secretary of State* v. *Mask. & Coy.*, [1] the Privy Council was dealing with the effect of the provisions contained in s. 188 of the Sea Customs Act (VIII of 1878). The relevant portion of the said section provides that every order passed in appeal under this section shall, subject to the power of revision conferred by s. 191, be final. Dealing with the question about the effect of this provision, the Privy Council observed that it is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. Lord Thankerton who delivered the opinion of the Board, however, proceeded to add that

(1) (1940) 67 I.A. 222, 236.

"it is also well-settled that that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure." It is necessary to add that these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merits and as such, it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute. In what cases such a plea would succeed it is unnecessary for us to decide in the present appeal because we have no doubt that the contention of the appellant that on the merits, the decision of the assessing authority was wrong, cannot be the subject-matter of a suit because s. 18-A clearly bars such a claim in the civil courts.

The next decision to which reference may be made was pronounced by the Privy Council in the

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case of *Releigh Investment Coy. Ltd.* v. *Governor-General in Council* (1). In that case the effect of s. 67 of the Indian Income-tax Act fell to be considered. The said section, *inter alia*, provides that no suit shall be brought in any civil court to set aside or modify any assessment made under this Act. It would be noticed that the words used in this section are exactly similar to the words used in s. 18-A with which we are concerned. In determining the effect of s. 67, the Privy Council considered the scheme of the Act by particular reference to the machinery provided by the Act which enables an assessee effectively to raise in courts the question whether a particular provision of the Income-tax Act bearing on the assessment made is or is not *ultra-vires*. The presence of such machinery observed the judgment, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to enquire into the same subject-matter. It is true that the judgment shows that the Privy Council took the view that even the constitutional validity of the taxing provision can be challenged by adopting the procedure prescribed by the Income-tax Act; and this assumption presumably proceeded on the basis that if an assessee wants to challenge the vires of the taxing provision on which an assessment is purported to be made against him, it would be open to him to raise that point before the taxing authority and take it for a decision before the High Court under s. 66 (1) of the Act. It is not necessary for us to consider whether this assumption is well founded or not. But the presence of the alternative machinery by way of appeals which a particular statute provides to a party aggrieved by the assessment order on the merits, is a relevant consideration and that consideration is satisfied by the Act with which we are concerned in the present appeal.

The clause "assessment made under this Act" which occurs in s. 18-A also occurs in s. 67 with

(1) (1947) 74 I.A. 50, 68.

which the Privy Council was concerned, and in construing the said clause, the Privy Council observed that "the phrase "made under this Act" describes the provenance of the assessment : it does not relate to its accuracy in point of law. The use of the machinery provided by the Act, not the result of that use, is the test." These two Privy Council's decisions support the conclusion that having regard to the scheme of the Act, s. 18-A must be deemed to exclude the jurisdiction of civil courts to entertain claims like the present.

In the result, we must hold that the view taken by the High Court is right and so, the appeal fails and is dismissed. There would be no order as to costs.

Appeal dismissed.

KISHAN CHANDER

v.

STATE OF MADHYA PRADESH

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Ultra Vires—Principle of—Constitution of Ind Arts. 13, 19, 21,—The United State of Gwolior, Indore and Malwa (Madhya Bharat) Gambling Act, samvat 2006 (Madhya Bharat Act No. 51 of 1949), ss. 6, 8.

The three appellants with five others were tried for offences under s. 4 of the United State of Gwalior, Indore and Malwa (Madhya Bharat) Gambling Act and sentenced to imprisonment. The Sessions Judge rejected their appeals. The High