

(1995) 11 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petitions No's. 6525 to 6527 of 1995

B.M. Shivakumar

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 24-11-1995

Acts Referred:

Coffee Act, 1942 — Section 25, 25 A, 26

Citation : (1996) ILR (Kar) 397 : (1996) 41 KarLJ 1

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : B.A. Lokesh, Deokinandan, for the Appellant; K.M.L. Majele, R.I. D'sa, for the Respondent

Judgement

G.C. Bharuka, J.—This is the third round of litigation which has been brought to this court in order to undo the legislative efforts of roping in "the coffee pool payments" received after partition of an erstwhile Hindu undivided family ("HUF", for short) as agricultural income in the hands of the Hindu undivided family itself for the purpose of levying tax under the provisions of the Agricultural Income Tax Act, 1957 (hereinafter referred to as "the principal Act").

2. The petitioner and his two sons, Sri B.S. Arvind and B.S. Ashwin, constituted a Hindu undivided family. This family being a coffee planter had agricultural income. It was accordingly being assessed to tax under the provision of the Act. A partition was effected in the family by metes and bounds under a registered deed dated March 29, 1980, and it was so claimed before the respondent-Assistant Commissioner of Agricultural Income Tax, Hassan. The said respondent after holding an enquiry as required u/s 30(1) of the Act accepted the partition by his order dated August 20, 1983 (annexure "A"). Accordingly, the three coparceners were subjected to separate assessments in respect of agricultural income derived by them out of the portion of the family property falling to their share for the assessment years 1981-82, 1982-83 and 1983-84 on the basis of returns submitted by each of them showing their status as "individual".

According to the petitioners in the said returns, they also included their respective shares in the coffee back-pool payments which had been received subsequent to the date of partition relating to the coffee sold by the erstwhile Hindu undivided family to the Coffee Board during the periods anterior to the date of partition. The assessment orders for the years 1981-82 and 1982-83 were passed on June 22, 1983, and that for the year 1983-84 was passed on March 22, 1984. During the previous years pertaining to the said assessment years, the coparceners had respectively received Rs. 1,76,765.19, Rs. 33,922.43 and Rs. 21,207.80 as "back-pool payments" from the Coffee Board as consideration of coffee crops sold by the Hindu undivided family to the Board during the periods prior to its partition.

3. The Joint Commissioner of Agricultural Income Tax, keeping in view the Explanation inserted in sub-section (2) of section 30 of the Act by the Karnataka Act (23 of 1985), pursuant to his suo motu revisional powers u/s 35 of the Act, partially set aside the assessment orders referred to above made in the hands of the respective coparceners as tenants-in-common/association of persons. According to him, as the back-pool payments received during the said periods being related to the coffee crop harvested by the erstwhile Hindu undivided family, the same could not have been assessed in the hands of the individual coparceners. He also directed that the said payments should be assessed in the hands of the erstwhile Hindu undivided family; and the demand notice be issued accordingly. The said order of the Joint Commissioner was challenged before this court in C.R.P. No. 4756 of 1991. This court keeping in view the law laid down in W.P. Nos. 16845 to 16847 of 1987 disposed of on August 20, 1991 (V.R. Uddappa Gowda v. Agrl. ITO), set aside the assessment orders dated September 17, 1991, passed consequent upon the direction of the Joint Commissioner and remitted back the matters to the Joint Commissioner for fresh disposal in accordance with law.

4. Subsequent thereto, the Hindu undivided family was served with three notices dated January 28, 1995 (annexure "D" series), purported to be u/s 30(2) of the principal Act proposing to assess the Hindu undivided family in respect of the back-pool payments received during the previous year pertaining to the assessment years 1981-82, 1982-83 and 1983-84 and invited objections, if any, to the proposed assessment. But, according to the petitioner, before they could file their objections they were served with demand notices being annexures "E" and "F" series intimating therein that in view of section 8 of the Karnataka Act 18 of 1994, the assessment orders passed earlier for the respective assessment years have become valid and accordingly the Hindu undivided family is liable to pay the tax assessed under those orders. In the present case, the petitioner has assailed the validity of the notices at annexures "E" and "F" series by raising various legal objections.

5. Section 30 of the principal Act which provides for assessment after partition of a Hindu undivided family, as it originally stood read as under :

"S. 30. Assessment after partition of a Hindu undivided family. - (1) Where at the time of making an assessment u/s 19, it is claimed by or on behalf of any member of a Hindu undivided family, or branch, an Aliyasanthana family or a Marumakkattayam tarwad or tavazhi hitherto assessed as undivided that a partition or maintenance division has taken place among the members or groups of members of such family, branch, tarwad or tavazhi, the Agricultural Income Tax Office shall make such inquiry there in to as he may think fit, and if he is satisfied that there has been a partition or maintenance division of the property by metes and bounds among the various members or groups of members and separate enjoyment by them he shall record an order to that effect :

Provided that no such order shall be recorded until notice of the inquiry has been served on all the adult members of the family, branch, tarwad or tavazhi entitled to the property as far as may be practicable or in such other manner as may be prescribed.

(2) When such an order has been passed, the Agricultural Income Tax Office shall make an assessment of the total agricultural income received by or on behalf of the family, branch, tarwad or tavazhi as such, as if no partition or maintenance division had taken place and each member or group of members shall, in addition to any agricultural Income Tax for which he or it may be separately liable, and notwithstanding anything contained in clause (a) of section 12, be liable for a share of tax on the income so assessed according to the portion of the family, branch, tarwad or tavazhi property allotted to him or it and the Agricultural Income Tax Office shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 19 :

Provided that all the members and groups of members whose family, branch, tarwad or tavazhi property has been partitioned or divided for maintenance shall be liable jointly and severally for the tax on the total agricultural income received by or on behalf of the family, branch, tarwad or tavazhi as such up to the date of the partition.

(3) Where such an order has not been passed in respect of a Hindu family, an Aliyasanthana family or branch or a Marumakkattayam, tarwad or tavazhi hitherto assessed as undivided, such family, branch, tarwad or tavazhi shall be deemed for the purpose of this Act to continue to be an undivided family, branch, tarwad or tavazhi."

6. Keeping in view the provisions of section 30(2) of the Act noticed above, this court in the case of Madhwa Ramachandra Mutalik Vs. Agri. Income Tax Officer, Bijapur Dist., , , took the view that :

"Section 30 of the Act is similar to section 25A of the Indian Income Tax Act, 1922. That provision was introduced by way of an amendment in order to remove a lacuna in the enactment. An HUF is treated as a unit for assessment and if at the time of making an assessment, the family has become divided,

there would not be an undivided family as a unit on which an assessment could be made. Therefore, a specific provision was introduced in order to enable the Income Tax Office to make an assessment on an undivided family notwithstanding that the members had become divided before an assessment was made. The income to be assessed would be the income of the Hindu undivided family. After a division among the members of the family, the receipts cannot be termed as the income of the undivided family as such. The assessment that could be made on the undivided family, even though it was divided at the time of making the assessment, is in respect of the income derived or accrued to the Hindu undivided family as such, i.e., the income derived up to the date of division and that is to be assessed in the hands of the Hindu undivided family. Section 30 of the Act, being in similar terms, its purpose is also the same."

7. Possibly, as a result to the said judgment the authorities under the principal Act found it difficult to bring to tax the coffee back-pool payments and the like receipts received after the partition of the family in the hands of the Hindu undivided family. Accordingly, to fill up the said lacuna, an Explanation to section 30(2) of the principal Act was inserted by section 6 of the Karnataka Agricultural Income Tax. (Amendment) Act, 1985 (Act 23 of 1985), with a declaration that it shall deemed always to have been inserted. The Amending Act came into force on April 1, 1985. The said Explanation read as under :

"Explanation. - For the removal of doubts, it is hereby declared that where any crop is harvested but not disposed of before the partition of a Hindu undivided family, or a branch, an Aliyasanthana family or Marumakkattayam tarwad or tavazhi hitherto assessed as undivided, the income from such crop shall be deemed to be the income of such Hindu undivided family or a branch or Aliyasanthana family or Marumakkattayam tarwad or tavazhi and the estimated value of such crop at the average market rate shall be assessed as the income for the year of harvest, or the cash amount received for such crop shall be assessed as the income for the year or years in which it is received, according to the method of accounting regularly employed by the assessee, and where no method of accounting has been regularly employed by the assessee, the estimated value of such crop at the average market rate shall be assessed as the income for the year of harvest."

8. When the said Explanation fell for consideration of this court in the case of H. KENCHE GOWDA Vs. STATE OF KARNATAKA. (JOINT COMMISSIONER OF AGRL. Income Tax)., , a Bench of this court speaking through Rajendra Babu J., found the Explanation to be insufficient for netting the income of the coffee back-pool payments in the hands of the disrupted Hindu undivided family in view of the Explanation "harvested but not disposed of", since according to their Lordships in view of the law laid down by the Supreme Court in the case of State of Kerala and Others Vs. Bhavani Tea Produce Co. Ltd., , the right in the coffee vests in the Coffee Board simultaneously when it is harvested, and, therefore, no coffee crop can be said to be "harvested but not disposed of". Accordingly, it was held that

(at page 394) :

"The Explanation to section 30(2) of the Act provides that income from the crop harvested but not disposed of, shall be deemed to be the income of such Hindu undivided family and shall be assessed as income of the year in which it is received according to the method of accounting regularly employed by them."

9. After noticing the judgment of this court in K. Cheyyabba Vs. State of Karnataka, , it was further held that (at page 394) :

"..... when the rights of the grower had extinguished on supply of coffee crop to the Coffee Board, the resulting position is that the coffee crop has been "disposed of" for purposes of the proviso. Admittedly, the coffee crop had been harvested and disposed of prior to partition by the petitioner by supply to the Coffee Board as contemplated u/s 25 of the Coffee Act. Thus, the conclusion is irresistible that the proviso has no application to the instant case at all."

10. The judgment in the case of H. KENCHE GOWDA Vs. STATE OF KARNATAKA. (JOINT COMMISSIONER OF AGRL. Income Tax)., , once again prompted the Legislature to substitute the Explanation to section 30(2) of the principal Act by another Explanation to cover up the lacuna pointed out by this court. Accordingly, by the Karnataka Agricultural Income Tax (Amendment) Act, 1989 (Act 19 of 1989), a new Explanation was substituted for the earlier one by which the Legislature incorporated in the Explanation the expression "... the crop is harvested and disposed of, but full payment has not been received for such crop or the crop is harvested and not disposed of". The Explanation so substituted read thus (see Commissioner of Income Tax Vs. B.K. Oil Traders, :

"Explanation. - For the removal of doubts, it is hereby declared that where before the partition of a Hindu undivided family or branch or an Aliyasanthana family or Marumakkattayam tarwad or tavazhi hitherto assessed as undivided the crop is harvested and disposed of, but full payment has not been received for such crop or the crop is harvested and not disposed of, the income from such crop shall, notwithstanding the partition, be deemed to be the income of the Hindu undivided family or branch or the Aliyasanthana family or the Marumakkattayam tarwad or the tavazhi for the year or years in which it is received or is receivable, and shall be assessed as the income of such family or branch or Aliyasanthana family or Marumakkattayam tarwad or tavazhi according to the method of accounting regularly employed by it immediately before such partition."

11. But this Explanation was again found to be deficient for the purpose it was inserted by a subsequent judgment of this court in the case of V.R. Uddappa Gowda, wherein it has been held that though the lacuna pointed in H. KENCHE GOWDA Vs. STATE OF KARNATAKA. (JOINT COMMISSIONER OF AGRL. Income Tax)., had been filled up, the effect of the substituted Explanation was only to treat the income received by the individual members as income of the erstwhile Hindu undivided family and nothing more. It was held therein that :

"The machinery to assess the erstwhile Hindu undivided family has not been created under the Explanation anywhere. Nowhere the Explanation creates a Hindu undivided family to be in existence for the purpose of the said income deemed to have been received by it."

12. It was further held that -

"No charge is created and the Hindu undivided family which has ceased to exist is not deemed to be in existence during the years in which the income was received. In the circumstances, we are of the view that the assessing authority erred in proceeding to assess the erstwhile Hindu undivided family, as a matter of course, u/s 30(2) of the Act."

13. Faced with the abovesaid judgment in Uddappa Gowda's case (supra), the Legislature once again amended the Explanation to section 30(2) of the principal Act so as to cover up the further deficiencies pointed out by this court, and also made certain other amendments in order to make the assessment orders passed against the Hindu undivided family subsequent to its partition sustainable in law. This was done by the Karnataka Agricultural Income Tax (Amendment) Act, 1995 (Act 18 of 1994). By this Amending Act, apart from making some insertions in the Explanation making them retrospective, two other sub-sections were also added to section 30 of the Act. The amended Explanation and two sub-sections being (4) and (5) read as follows :

"S. 30(2)

Explanation. - For the removal of doubts, it is hereby declared that where before the partition of a Hindu undivided family or branch or an Aliyasanthana family or Marumakkattayam tarwad or tavazhi hitherto assessed as undivided the crop is harvested and disposed of, but full payment has not been received for such crop or the crop is harvested and not disposed of, the income from such crop, shall, notwithstanding the partition, be deemed to be the income of the Hindu undivided family or branch or the Aliyasanthana family or the Marumakkattayam tarwad or the tavazhi for the year or years in which it is received or is receivable, and the Hindu undivided family or branch or the Aliyasanthana family or the Marumakkattayam tarwad or tavazhi shall be deemed to be in existence for such year or years, as such income shall be assessed as the income of such family or branch or Aliyasanthana family or Marumakkattayam tarwad or tavazhi according to the method of accounting regularly employed by it immediately before such partition."

"(4) Notwithstanding anything contained in section 32A, 34, 35, 36, 37, or 55, in cases before the partition of a Hindu undivided family or branch or the Aliyasanthana family or the Marumakkattayam tarwad or tavazhi, hitherto assessed as undivided, the crop is harvested and disposed of, but full payment has not been received for such crop, or the crop is harvested and not disposed of, proceedings to assess or reassess the income from such crop or to revise any assessment for reassessment of such income may be commenced within the

period of limitation specified under the provisions of this Act in respect of assessment, reassessments or revisions or within one year from the date of the commencement of the Karnataka Taxation Laws (Amendment) Act, 1994, whichever is later.

(5) Where an assessment is to be made under sub-section (4), the Agricultural Income Tax Officer may serve on the person whose agricultural income is to be assessed, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 18 and the provisions of the Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

14. According to the petitioner, the demand raised against the Hindu undivided family of the petitioner as evidenced by annexures "E" and "F" series cannot still be sustained and needs to be quashed in view of various issues raised in the writ petition.

15. The issues raised are these :

(1) Whether the Legislature can be said to be competent to validate the assessment process which was otherwise found to be invalid by the court by filling up the lacuna/deficiencies which had formed the foundation of judicial pronouncement ?

(2) Whether a new life can be infused to already time-barred proceedings by incorporating provisions like sub-section (4) to section 30 of the principal Act ?

(3) Whether "coffee back-pool payments" received after disruption of a Hindu undivided family and already assessed in the hands of separated members of the family, can be subjected to tax twice over in the hands of the fictional Hindu undivided family created under the deeming provisions ?

(4) Whether the assessment can be made or tax demand can be raised against a fictional Hindu undivided family without undertaking the assessment process envisaged u/s 30(5) read with section 18(2) of the principal Act ?

I have heard Mr. Sarangan, Mr. Kishore Malya, Mr. Lokesh and other learned advocates appearing for the petitioners in various writ petitions which have been heard together and Mr. D'Sa, the learned Additional Government Advocate, appearing for the respondents.

Keeping in view the importance of the rival contentions advanced at the Bar, those need to be considered in a little greater detail.

Under the Constitution of India "taxes on agricultural income" is a State subject being entry 46 in List II of the Seventh Schedule to the Constitution. Article 366(1) of the Constitution defines "agricultural income" to mean agricultural income as defined for the purposes of the enactments relating to Indian Income Tax.

Section 2(1)(a) of the principal Act as substituted by the Karnataka Act 14 of 1983 and clause (q) thereof defines the agricultural income and plantation crop as under :

"2. Definition. - (1) In this Act, unless the context otherwise requires, -

(a) "agricultural income" means

(1) any rent or revenue derived from land situated in the State of Karnataka and used for growing plantation crops;

(2) any income derived from such land by, -

(i) agriculture, or

(q) "plantation crop" means cardamom, coffee, linaloe, orange, pepper, rubber or tea;"

16. Therefore, the State Legislature has the competence to levy tax on agricultural income derived by a person by growing plantation crops which includes "coffee crops" on land owned or possessed by him. It is well established that a cultivating owner or a tenant of a land who sells his standing crop or the produce thereof after harvest, derives his income from his land by agriculture within the constitutional meaning of the expression "agricultural income" as defined in the Central as well as the State Acts. The definition of agricultural income adopted by the State Legislature under the principal Act is well within the wider definition given to the expression by Parliament in the Income Tax Act, 1961. It has also been judicially held that a merchant who purchases a standing crop or sells it after harvest cannot be said to be deriving agricultural income since his profits are referable to a trading operation of purchase/sale of harvest and not as a result of carrying on any agricultural operation (see The Commissioner of Income Tax Vs. Maddi Venkatasubbayya and Vellanki Venkataratnam, and Commissioner of Income Tax Vs. Mahasamund Kissan Co-operative Rice Mill and Marketing Society Ltd., .

17. Section 3 of the principal Act is the charging section. Sub-section (1) thereof is material for the present purposes which reads as under :

"Agricultural Income Tax at the rate or rates specified in the Schedule to this Act shall be charged for each financial year commencing from the first April, 1957, in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every person."

18. The words "previous year" and "person" used in section 3 noticed above a material bearing on the controversy in hand. The word "person" has been defined u/s 2(p) of the principal Act, inter alia, to include any individual or association of individuals, firm, company or any Hindu undivided family (HUF). Therefore, for the purpose of the principal Act, the firm or association of persons as also the Hindu undivided family have been recognised as independent legal entities as taxable units; and the tax incidents falling on such entities cannot be inflicted on

its constituents or members but for specific statutory provisions in this regard. Therefore, the Legislature took care to incorporate sections like section 24, 27 and 30 to the principal Act to provide for a machinery to levy and collect tax in case a person earning agricultural income ceases to exist on the date on which assessments and/or collection of tax is sought to be made. Such eventualities can arise by death of the individual or dissolution of the firm or association or disruption/partition of the Hindu undivided family. Sections 25 and 26 take notice of some other eventualities like the transfer of land and consequent tax liability in the hands of transferor or transferee with reference to a particular previous year in which transfer takes place. Similarly, section 26 provides for assessment and collection of tax in case a company or firm or association of persons, though surviving, discontinues the business through which agricultural income is received. Though there appears some overlapping in sections 26 and 27 of the principal Act to the extent both sections refer to consequences of discontinuation of business by firm or association of persons, for the present it is not necessary to enter into its consequences, since none of these sections has any thing to do with the liability of Hindu undivided families.

19. So far as making of assessments and the realisation of tax pertaining to income of the Hindu undivided family after its partition is concerned, the provisions for the same have been made in section 30 of the principal Act. I have quoted the said provisions in extenso in the foregoing paragraphs, since the entire controversies in these writ petitions centres around the legislative competence of some of the provisions engrafted in that section or their interpretation and application. I will be dealing with these aspects a little later since for proper resolution of the dispute, I find it now necessary to refer to some of the provisions relating to assessment of income derived from "coffee crops".

20. Under the scheme of the principal Act, the assessment of agricultural income in a particular assessment year depends on the method of accounting employed by the assessee as is evident from the charging section read with the definition of "previous year" u/s 2(s) of the principal Act. Rule 9 of the Karnataka Agricultural Income Tax Rules, 1957 ("the Rules", for short), provides for the method of account, which reads as under :

"9. Method of accounting. - Where no method of accounting has been regularly employed by the assessee or where the method employed is such that in the opinion of the Agricultural Income Tax Officer, the agricultural income cannot be properly deduced therefrom, the Agricultural Income Tax Officer shall, after making such enquiry, as he considers necessary, compute the agricultural income of the assessee as under :-

(c) in case of coffee crop of the previous year, the cash amount received within the accounting period in respect of the crop grown and consigned by the assessee to the Coffee Board or the estimated value of such crop shall be taken into account as the income of the year according to the method of accounts regularly employed by the assessee :

Provided that if the estimated value declared by the assessee is less than the average of the rates declared by the Coffee Board for three immediate previous years, the Agricultural Income Tax Officer or the Assistant Agricultural Income Tax Officer shall take into consideration the average rates for the purpose of assessment :

Provided further any receipt in respect of the earlier season's coffee crop received during the accounting period in excess of the amount already taken into consideration in the assessments of proceedings years shall be considered as the income of the previous year."

21. At this juncture, it is necessary to determine as to how the income derived out of sale of coffee to the Coffee Board has to be determined and assessed keeping in view the provisions of the Coffee Board Act, 1942. This question, in my opinion, has been conclusively answered by the Supreme Court in the case of State of Kerala and Others Vs. Bhavani Tea Produce Co. Ltd., , with reference to the Madras Plantations Agricultural Income Tax Act (5 of 1955) as extended to the State of Kerala. The provisions of the principal Act and that of the Madras Act are almost in pari materia. On examining the scheme of the Coffee Board Act, it has been held by the Supreme Court that as soon as planters deliver coffee to the Coffee Board there is a sale by operation of law in favour of the latter. But the liability to pay agricultural Income Tax on the income arising out of such sale depends upon the system of accounting employed by the assessee-planter. It has further been held that if the system of accounting is cash in nature, the income would be taxable when it is actually received; but in the mercantile system it would be taxable in the year in which the relevant entry is made about the sale of coffee to the Coffee Board.

22. Coming to the facts of the present case, the Hindu undivided family being the planter during its subsistence, that is, during the period prior to partition, had effected statutory sale to the Coffee Board. Therefore, the agricultural income arising out of such sale was necessarily of the Hindu undivided family. But the Legislature gave an option to the assessee either to offer such income for taxation either during the accounting year in which the sale was effected on an estimated value of the same or postpone the taxable event to the accounting year in which the sale consideration was to be received. In the present case, the Hindu undivided family was maintaining a cash system of accounting and accordingly its income was being assessed to tax during the period payments were received from the Coffee Board.

23. The problem that had arisen in cases like the present one was that though the sale of coffee stocks was effected before partition of the Hindu undivided family, payments in relation to such sales were received by the members on behalf of their erstwhile undivided families subsequent to the date of partition; and as such a larger issue was made out as to whether payments so received by the members can be subjected to tax in the hands of the Hindu undivided family itself by treating it to be a taxable entity under the Act notwithstanding the fact

of its disruption. An ancillary question also seems to be of equal importance; namely, whether the payments so received can be treated to be the income of the members of erstwhile family to the extent of their shares as per the accepted partition in the family property.

24. Coming to the second question as noticed above, payments received from the Board for the back-pools of coffee which was admittedly sold by the Hindu undivided family cannot be said to be the income arising in the hands of its individual member/s for the simple reason that the said payments had not been received against the sale of any agricultural produce harvested by them in their individual capacity. Payments so received were definitely referable to the agricultural operations conducted by the family only. Therefore, what a best can be said is that these payments had been received by the respective members on behalf of the family because the payments made by the Board were due to the family alone. But the question is whether these payments which comprised income within the meaning of the principal Act could have been brought to tax in the hands of a person, namely, the Hindu undivided family, which had already disrupted on the date on which such payments were received.

25. To seek an answer to the question posed above, I may usefully refer to section 30(2) of the principal Act which in substance provides that after recording an order accepting partition under sub-section (1) of the said section, the Agricultural Income Tax Office shall make assessment of the total agricultural income received by or on behalf of the family as if no partition had taken place, and each member shall, apart from his personal liability, be liable for a share of tax on the income so assessed according to the portion of the family property allotted to him. Therefore, it was possible to construe that the back-pool payments which had been received by the members on behalf of the family after its partition relating to the sales effected by the family during its subsistence could have been brought to tax in the hands of the Hindu undivided family and the tax so assessed was to be borne by the respective members in proportion to their share in the family property. But since the said provisions were judicially found to be inapt for the said purpose, the Legislature thought it proper to insert an Explanation to sub-section (2) of section 30 of the principal Act to clarify its intention. Possibly, it is for this reason that the opening words of the Explanation reads : "For the removal of doubts, it is hereby declared that".

26. In the present case, as discussed above, it cannot be disputed that the coffee back-pool payments pertained to the income of the Hindu undivided family and it was liable to tax under the Act. But the question is whether the Hindu undivided family can be assessed to tax after its partition. Therefore, we are concerned with a machinery provision, namely, section 30 of the Act, which prescribes for the computation of tax and not with the charging provision, namely, section 3 of the Act.

27. The rule of interpretation of taxing statutes in general and charging and machinery sections in particular has been succinctly carved out by the Supreme

Court in the case of Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others, . These rules are -

- (i) Taxing provisions as well should receive a reasonable construction.
- (ii) Courts ought not to be astute to hunt out ambiguities by an unnatural construction of a taxing statute.
- (iii) The subject is not to be taxed unless the charging provision clearly imposes the obligation, and;
- (iv) While interpreting the machinery section in taxing statute, a construction which makes it object oriented and workable, in the sense it effectuates the charging section, should be preferred unless crucial omission or clear direction makes that end unattainable.

28. Now, a plain reading of section 30(2) with its Explanation as it presently stands, makes it clear that the Legislature by filling up the lacunae pointed out by this court has been able to make apposite provisions for securing its objective of bringing to tax the payments received against crops harvested and disposed of by the Hindu undivided family before its partition in its hands irrespective if the fact whether those were received before or after the partition. These provisions have been given retrospectivity from the inception of the Act. Therefore, the petitioners now cannot assail the assessment orders on the basis of the judgments of this court in the case of H. KENCHE GOWDA Vs. STATE OF KARNATAKA. (JOINT COMMISSIONER OF AGRIL. Income Tax)., and Uddappa Gowda (supra).

29. It has been submitted that the retrospective operation of the provisions violates articles 14 and 19(1)(g) of the Constitution of India since it speaks of arbitrariness and unreasonableness on the part of the Legislature. So far as this assailment is concerned, as already noticed above, the impugned Explanation has been inserted and successively amended only to make the machinery provisions more explicit so that a Hindu undivided family which had already earned the liability to tax under the principal Act can be effectively assessed. This provision neither creates any charge by itself nor prescribes or alters the rate of tax. By now it is well-settled that the Legislatures in India, if they are otherwise competent to legislate on a topic, can make laws prospectively as well as retrospectively (see Tata Iron and Steel Co. Ltd. Vs. State of Bihar,

30. The second objection raised on behalf of the petitioners is based on sub-section (4) of section 30 as inserted by the Karnataka Act 18 of 1994. This sub-section, inter alia, provides that notwithstanding various time-limits provided under other sections of the principal Act, in the case of a Hindu undivided family falling within the ambit of the Explanation to section 30(2), proceedings to assess or reassess the income can be commenced within the period of limitation specified under the provisions of the Act for the said purpose or within one year from the date of commencement of the amending Act of 1994, whichever is later.

Therefore, the Legislature in its wisdom has, for computing the assessment/reassessment in cases like the present one, extended the period of limitation till March 31, 1995.

31. The contention raised is that it is not competent on the part of the Legislature to extend the period of limitation as has been sought to be done by sub-section (4) of section 30 because it impairs the rights of immunity from assessment/reassessment vested in the assessees on the expiration of the periods of limitation as originally prescribed. It has been submitted that the Legislature cannot extend the time once the action is already time-barred. To support this contention reliance has been placed on the decisions of J.P. Jani, J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, and the The State of Andhra Pradesh Vs. Venkateshwara Roller and Flour Mill,

32. In the case of The Ahmedabad Mfg. and Calico Printing Co., Ltd. Vs. S.C. Mehta, Income Tax Officer and Another, , it has been held that (48 ITR 171 (SC)) :

"It must be remembered that if the Income Tax Act prescribes a period during which the tax due in any particular assessment year may be assessed, then on the expiry of that period the Department cannot make an assessment. Where no period is prescribed the assessment can be completed at any time but once completed it is final. Once a final assessment has been made, it can only be reopened to rectify a mistake apparent from the record (section 35) or to reassess where there has been an escapement of assessment of income for one reason or another (section 34). Both these sections which enable reopening of back assessments provide their own periods of time for action but all these periods of time, whether for the first assessment or for rectification, or for reassessment, merely create a bar when the time passed against the machinery set up by the Income Tax Act for the assessment and levy of the tax. They do not create an exemption in favour of the assessee or grant an absolution on the expiry of the period. The liability is not enforceable but the tax may again become exigible if the bar is removed and the "taxpayer" is brought within the jurisdiction of the said machinery by reason of new power. This is, of course, subject to the condition that the law must say that such is the jurisdiction either expressly or by clear implication. If the language of the law has that clear meaning, it must be given that effect and where the language expressly so declares or clearly implies it, the retrospective operation is not controlled by the commencement clause."

33. The aforesaid decision has been followed with approval by the Supreme Court in its latter judgment in the case of S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, . By following this judgment, in J.P. J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, by construing the provisions which were there before their Lordships, it was held that the new statute did not disclose in express terms or

by necessary implication that there was a revival of the right of the Income Tax Officer to reopen the assessment which was already barred under the old Act.

34. On a conspectus of judicial pronouncements, it is quite clear that it is fallacious to say that on the expiration of the period of limitation prescribed under a fiscal statute for completion of assessment or reassessment, the assessee acquires a vested right of not being assessed thereafter and the Legislature cannot take away such a right. As held by the Supreme Court, the periods of time prescribed under such statutes are a part of assessment machinery and do not create any exemption. It merely creates a fetter on the power of the assessing authorities to undertake or complete the process of assessment on the expiry of such period/s. But such a period can always be extended by the Legislature either by express or by clear implication to be culled out from the provisions of the statute. Therefore, as held by the Supreme Court, the Legislature is competent enough to lift the time fetter placed on the assessing authority for completion of assessment by enlarging the same even after the expiry of the period. Such legislative exercise cannot be said to be bad either on the ground of incompetence or in any way unreasonable or arbitrary offending any of the constitutional prohibitions. In the present case, the provisions under sub-section (4) of section 30 of the principal Act clearly and expressly declares the legislative intendment and its object is writ large as is apparent from the successive amendments noticed above.

35. Viewing from these aspects, in my opinion, the second contention as raised is also without any substance and is accordingly rejected.

36. The third contention is that since the back-pool payments received subsequent to disruption of the Hindu undivided family had already been assessed in the hands of the separate members of the family, it cannot be subjected to tax twice over in the hands of the fictional Hindu undivided family created under the deeming provisions. This submission is ex facie fallacious for two reasons. Firstly, on the facts it has been found that though originally at the initiative of the respective members of the family the said back-pool payments were assessed in their hands to the extent of their shares, the fact having come to the knowledge of the Joint Commissioner, the orders were revised under the suo motu revisional powers and subsequently those have been brought to tax in the hands of the Hindu undivided family itself. Therefore, there cannot be any question of taxing the said income twice over. Secondly, even otherwise it is always competent on the part of the assessing authorities to assess the income in the right hands. If the said income has been wrongly taxed in the hands of the person who is not liable to be taxed for the said income, he can always have his remedy under the provisions of the Act either by way of appeal or revision or rectification. But this fact by itself cannot be taken as a ground for not bringing the income to tax in the hands of the right person. Therefore, this contention is also rejected.

37. Coming to the last contention, it has been submitted that the impugned

demand notices have been issued without undertaking the process of assessment envisaged u/s 30(5) read with section 18(2) of the principal Act. So far as this aspect is concerned, as noticed above, the assessment orders dated September 17, 1991, had already been passed on following the procedure prescribed under the Act. But the same were set aside by this court keeping in view the deficiencies pointed out in V.R. Uddappa Gowda's case (supra). The Legislature, thereafter, by making suitable amendments to the relevant provisions of the principal Act, as noticed above, has taken away the basis on which the said decision was rendered. By section 8 of Act 18 of 1994 it has also validated all proceedings, acts or things taken or done for the purpose of or in relation to levy of assessment or collection of tax before the commencement of the said Act by expressly providing that all such acts shall for all purposes be deemed to be and to have always been levied, taken or done as validly and effectively.

38. In the case of Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, , a Constitution Bench of the Supreme Court had laid down the requirements which a validating law should satisfy in order to validate the levy and collection of tax which had been declared illegal by the court earlier. At page 195 of the report, it has been held that :

"When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-

matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax."

39. By relying with approval on the aforesaid judgment, the Supreme Court again in the case of Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and Others, has held that (at page 1687) :

"It is now well-settled that it is permissible for a competent Legislature to overcome the effect of a decision of a court setting aside the imposition of a tax by passing a suitable legislation amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court had been rendered and by enacting an appropriate provision validating the levy and collection to tax made before the decision in question was rendered."

40. A reading of the validating section 8 shows that the relevant amendments have been effected retrospectively taking away the very basis on which this court had based its reasonings in the case of Uddappa Gowda's case (supra) and has by clear intendment and declaration validated the assessments made and the tax demands created. In this view of the matter, it was not at all necessary on the part of the respondents to de novo initiate the assessment proceedings by issuing assessment notices in terms of section 30(5)/18(2) of the principal Act.

41. Anyhow, it is clarified that if the petitioners have any grievance against the computation of income it will be open to them to avail of the statutory remedies provided under the Act in accordance with law. In case such remedies are found to have been barred by limitation, it is desirable that the concerned authorities should sympathetically consider the question of condoning the delays keeping in view the filing of the writ petitions before this court against the impugned assessment orders and/or demand notices.

42. In the result, these writ petitions fail which are accordingly dismissed but without any order as to costs.