

(1986) 03 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 4309 of 1981

B.S. Jayachandra

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 24-03-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 2 (14) (iii), 47, 54 B

Citation : (1986) 54 CTR 342 : (1987) ILR (Kar) 1088 : (1986) 161 ITR 190

Hon'ble Judges : R.S. Mahendra, J; K.S. Puttaswamy, J

Bench : Division Bench

Advocate : K.B. Basavarajan, for the Appellant; K. Srinivasan, for the Respondent

Judgement

K.S. Puttaswamy, J.—On a reference made by Chandrakantaraj Urs. J., this case was posted before us for disposal.

2. Among others, the petitioner was the owner of land bearing Survey No. 61 measuring about 4 acres 22 guntas in Doddakallasandra village, Uttarahalli Hobli, Bangalore South Taluk, classified as agricultural land and the same was situated within 8 kms. of the Municipal Corporation of the City of Bangalore. On December 18, 1972, the petitioner sold the said land to Khandhand Agarwal and others, partners of M/s. Gupta Wires and Products, Bangalore, for a consideration of Rs. 86,450.

3. For the assessment year 1973-74 relevant to the accounting year ending on March 31, 1973, the petitioner did not file his return under the Income Tax Act of 1961 (Act No. 43 of 1961) ("the Act"), disclosing the receipt of the said sum and its chargeability to capital gains tax under the Act. But, some time, in 1976, the petitioner filed his return under the Act before the Income Tax Officer (Assessment 4A), Circle-II, Bangalore, inter alia, returning a net capital gain of Rs. 17,893 from the said sale transaction valuing the land at Rs. 9,000 per acre as on January 1, 1954. On June 23, 1976, the Income Tax Officer completed the

assessment (annexure-A) fixing the net capital gain at Rs. 47,028 and brought the said amount to tax under the Act. Aggrieved by the said order of the Income Tax Officer, the petitioner filed an appeal before the Appellate Assistant Commissioner of Income Tax, Bangalore Range, who by his order dated November 11, 1976 (annexure-B), disposed of the same affirming the order of the Income Tax Officer on the determination of capital gains, however, granting him relief on interest imposed by the Income Tax Officer. Aggrieved by the said order of the Appellate Assistant Commissioner and the Income Tax Officer, the petitioner and the Income Tax Department filed second appeals before the Income Tax Appellate Tribunal, Bangalore ("the Tribunal"). On July 19, 1978, the Tribunal disposed of the said appeals by a common order granting some relief to the Department. On those matters decided by the Tribunal, certain references under the Act are pending before this court.

4. Before this court could furnish its opinion on those references, the petitioner has moved this court on March 12, 1981, under article 226 of the Constitution challenging the validity of section 2(14)(iii) of the Act inserted by section 3 of the Finance Act of 1970 (Central Act No. 19 of 1970) (the Finance Act), on the sole ground that the same was beyond the legislative competence of the Union Parliament.

5. The respondents have resisted the writ petition.

6. Sri K.B. Basavarajan, learned counsel for the petitioner, has urged that section 2(14)(iii) of the Act dealing with income "arising from sale of lands used for agricultural purposes "is outside the legislative competence of the centre as the subject is exclusively assigned to states either under Entry No. 18 or 46 of List II, State List of the 7th Schedule to the Constitution. In support of his contention, Sri Basavarajan has strongly relied on a Division Bench ruling of the Bombay High Court in Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, .

7. Sri K. Srinivasan, learned senior standing counsel for the Income Tax Department, appearing for the respondents, has urged that on a true construction of the term "agricultural income" occurring in article 366(1) of the Constitution and entry No. 82 of List I, Union List, of the 7th schedule to the Constitution, the income was neither agricultural income nor revenue income but income and the Union Parliament was competent to enact section 2(14)(iii) of the Act, which was valid, as ruled by the High Court of Ambalal Maganlal Vs. Union of India and Another,

8. In Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, decided as early as on November 1, 1954, an unanimous Constitution Bench of the Supreme Court, speaking through S.R. Das J. (as his Lordship then was), while upholding the validity of the amendments to the earlier Indian Income Tax Act of 1922 ("the 1922 Act"), which brought capital gains to tax, ruled that the same was income for purposes of the corresponding entry No. 54 of the

Government of India Act of 1935 and that Act and those principles followed in all the latter cases must also govern in interpreting that term occurring in the Constitution and the Act.

9. The Act is a consolidating and amending Act. The Act that came into force from April 1, 1962 (vide section 1(3) of the Act), closely follows the 1922 Act.

10. Prior to April 1, 1970, the term "agricultural income" and "capital asset" were defined in sections 2(1) and 2(14) of the Act as hereunder :

"2. In this Act, unless the context otherwise requires, -

(1) "agricultural income" means -

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such;

(b) any income derived from such land by -

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land or occupied by the cultivator or the receiver of rent-in-kind of any land with respect to which any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on;

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building."

"(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include -

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;

(iii) agricultural land in India;

(iv) 6 1/2 per cent. Gold Bonds, 1977, or 7 per cent. Gold Bonds 1980, or National Defence Gold Bonds, 1980, issued by the Central Government."

11. On the language of these terms and other related provisions regulating capital gains under Chapter IV-E of the Act, capital gains arising or accruing from sale of agricultural lands were not subject to capital gains tax under the Act or the State enactment in our State called the Karnataka Agricultural Income Tax Act of 1957.

12. The Taxation Laws (Amendment) Act of 1970 (Central Act No. 42 of 1970) ("the Amending Act"), amended section 2(1) of the Act with retrospective effect from April 1, 1962. Section 2 of the Amending Act read thus :

"2. In section 2 of the Income Tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income Tax Act"), in clause (1), -

(i) for sub-clause (a), the following sub-clause shall be, and shall be deemed always to have been substituted, namely :-

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;"

(ii) in sub-clause (c), for the proviso, the following proviso shall be deemed always to have been, substituted, namely :-

"Provided that -

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the cultivator or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated -

(A) in any area which is comprised within the jurisdiction of a municipality (whether known as municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(B) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette."

13. Section 2(1) as amended by the Amending Act reads thus :

"2. In this Act, unless the context otherwise requires, -

(1) "agricultural income" means -

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by -

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that -

(i) the building is in or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated -

(A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last reseeded census of which the relevant figures have been published before the first day of the previous year; or

(B) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette."

14. The scope and effect of this amendment has been explained by the Central

Board of Direct Taxes (Board) in its Circular No. 56 dated March 19, 1971, in these words :

"91. Section 10(1) exempts agricultural income from Income Tax and also provides for its exclusion in computing the total income of the assessee. The exemption of agricultural income from central taxation is based on the provision in the Constitution according to which Parliament has exclusive power to make laws with respect to taxes on income other than agricultural income, whereas a State Legislature has exclusive power to make laws with respect to taxes on agricultural income, under article 246(1) of the Constitution read with entry 82 of List I (Union List) in the Seventh Schedule, and article 246(3) read with entry 46 of List II (State List). The expression "agricultural income", for the purpose of the above mentioned entries, means agricultural income as defined for the purpose of the enactments relating to Indian Income Tax, vide article 366(1) of the Constitution. Under the definition of "agricultural income" in clause (1) of section 2, the expression means :

(a) any rent or revenue derived from land which is used for agricultural purposes and which is either assessed to land revenue in India or is subject to local rate, assessed and collected by officers of the Government as such;

(b) Any income derived from such land by agricultural operations including processing of the agricultural produce raised or received as rent-in-kind so as to render it fit for the market, or the sale of such produce; and

(c) income attributable to farm houses, i.e., any building owned and occupied by the receiver of rent or revenue of any such land or by the cultivator or receiver rent-in-kind, subject to the condition that the building is on or in the immediate vicinity of the land and is a building which the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house or as a store house or other out-building.

92. In recent years, agricultural operations have been extended to lands in terai areas or cantonments, forest lands, etc., where the land is not assessed to land revenue and is not subject to any local rate as required under the abovementioned definition of agricultural income. Accordingly, income derived by agricultural operations on such lands is presently outside the scope of "agricultural income" and becomes liable to central Income Tax. Apart from this, in several States, lands up to specified limits have been exempted from land revenue assessment. Hence, income derived by the performance of agricultural operations on such land in these states would also come within the purview of central income taxation.

93. As the character of the income derived by agricultural operation remains the same whether or not the land is subject to land revenue or a local rate, it would be anomalous to subject to Central Income Tax such income in those cases where there is no land revenue assessment while exempting income of the same nature in the other cases. With a view to removing this anomaly and providing

tax relief to the agriculturist who cultivate forest lands, lands in terai areas or cantonments or in states which have abolished land revenue on small holdings, the definition of "agricultural income" in clause (1) of section 2 has been amended so as to drop the condition that the land from which the income is derived should be assessed to land revenue or any local rate. This change will bring within the purview of the expression "agricultural income", income derived from cultivation of forest lands, lands in terai areas and cantonments as also lands in respect of which the State Government does not levy any lands revenue.

94. In regard to income attributable to farm buildings, the amended definition of "agricultural income" provides that income attributable to such a building will be treated as agricultural income subject to the condition that the building is situated on, or in the immediate vicinity of land which is assessed to land revenue or a local rate, as at present, or, in the alternative, the building is on, or in the immediate vicinity of, land which (though not assessed to land revenue or any local rate) is situated outside "urban areas", i.e., any area which is comprised within the jurisdiction of any municipality or cantonment board having a population of not less than ten thousand persons (according to the last preceding census of which the relevant figures have been published before the first day of the previous year) or within such distance (up to a maximum of eight kilometres) from the limits of any such municipality or cantonment board as the Central Government may notify in the Official Gazette. Such notification is to be issued by the Central Government only where it is satisfied that the pace of urbanisation outside any such municipality or cantonment board justifies the treatment of such areas as "urban areas". The effect of this modification will be that income attributable to farm houses situated in such "urban areas" will not be treated as agricultural income unless the land on which the farm house is situated is assessed to land revenue or any local rate. However, in the case of farm houses situated in "rural areas, i.e., any area which is outside the jurisdiction of any municipality or cantonment board having a population of not less than ten thousand persons and also beyond the notified distance outside the limits of any such municipality or cantonment board, the income will be treated as agricultural income even where the land on which the farm house is situated is not assessed to land revenue or any local rate. For the purpose of this definition, municipality will include a municipal corporation, notified area committee, town area committee, town committee or other similar authority by whatever name called, e.g., "Nagar Nigam".

95. The amendment of the definition of agricultural income, as explained in the preceding paragraphs, is retrospective and is deemed to have taken effect from 1-4-1962, i.e., the date on which the Income Tax Act came into force. Accordingly, where income derived by agricultural operations on land which is not assessed to land revenue or any local rate has been subjected to Central Income Tax, the relevant assessment now be rectified and the tax charged on such income refunded or remitted, as the case may be. Where assessment proceedings have been initiated for bringing such income to tax, these should be

dropped."

15. We have examined this circular. We are of the view that the same correctly sets out the scope and ambit of the amended section 2(1) of the Act.

16. Section 3 of the Finance Act substituted section 2(14)(iii) from April 1, 1970, by a new provision which reads thus :

"3. Amendment of section 2. - In section 2 of the Income Tax Act, -

(a) in clause (14), for sub-clause (iii), the following sub-clause shall be substituted, namely :-

(iii) agricultural land in India, not being land situate -

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of a not less than ten thousand according to the preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette."

17. The object of this amendment has been explained in the Notes on Clauses to clause 3 of the Finance Bill of 1970 in these words :

"Sub-clause (a) seeks to amend clause (14) of section 2 of the Income Tax Act which defines the term "capital asset". The amendment seeks to bring within the term "capital asset" agricultural land situated within the limits of any municipality (whether known as a municipality, municipal corporation, notified areas committee or by any other name) or a cantonment board having a population of 10,000 or more according to the last census for which the figures have been published before the first day of the previous year. Further, agricultural land situated in areas lying within a distance not exceeding eight kilometres from the local limits of such municipalities or cantonment board will also be covered by the amended definition of "capital asset", if such areas are, having regard to the extent of and scope for their urbanisation and other relevant considerations, notified by the Central Government in this behalf. The effect of the proposed amendment will be that capital gains arising from the transfer of a agricultural land situated in municipal or other urban areas or notified adjoining areas will be liable to Income Tax for the assessment year 1970-71 and subsequent years. However, in view of the proposed amendment to section 47 of the Income Tax Act, under clause 11 of the Bill, capital gains arising from transfers of such land effected prior to 1st March, 1970, will be excluded

from taxation.

18. Agricultural land which is situated outside such municipal or other urban areas or the notified adjoining areas will, however, continue to be excluded from the term "capital asset" and no capital gains tax will be payable with reference to the transfer of such agricultural land, as hitherto." (Vide : Notes on Clauses - Finance Bill [1970] 75 ITR 69).

19. In Circular No. 45 dated September 2, 1970, the Board has reiterated the same in these words Commissioner of Income Tax Vs. Fort Gloster Industries Ltd., "Capital gains arising from transfer of agricultural land in urban areas.

29. Capital gains arising from the transfer of a capital asset have been chargeable to Income Tax for several years past. Where the transfer of the capital asset is effected within a period of 24 months from the date of its acquisition by the assessee, the capital gain is treated on a par with ordinary income and charged to tax on that basis. Gains arising from the transfer of a capital asset held by the assessee for more than 24 months are charged to tax on a concessional basis. In the case of companies, such gains are taxed at the rate of 40 per cent. where they relate to lands and buildings, and at 30% where they relate to other assets. In the case of non-corporate taxpayers, only a certain portion of the capital gains in excess of Rs. 5,000 is included in the taxable income. This proportion is 55% where the gains relate to lands and buildings and 35% where they relate to other assets.

30. Prior to the amendment made by the Finance Act, 1970, the definition of the term "capital asset" in section 2(14) of the Income Tax Act, 1961, excluded from its scope, inter alia, agricultural land in India. Accordingly, no liability to tax arose on gains derived from transfer of agricultural land in India. This exemption of agricultural land scope of levy of tax on capital gains has a historical origin and is not due to any bar in the Constitution on the competence of Parliament to legislate for such levy. Agricultural land situated in municipal and other urban areas is essentially similar to non-agricultural land in such areas in its potentialities for use due to the progress of urbanisation and industrialisation. The Finance Act, 1970, has accordingly amended the relevant provisions of the Income Tax Act so as to bring within the scope of taxation capital gains arising from the transfer of agricultural land situated in certain areas. For this purpose, the definition of the term "capital asset" in section 2(14) of the Income Tax Act has been amended so as to exclude from its scope only agricultural land in India which is not situate in any area comprised within the jurisdiction of a municipality or cantonment board and which has population of not less than ten thousand persons according to the last preceding census for which the relevant figures have been published before the first day of the previous year. The Central Government has been authorised to notify in the Official Gazette any area outside the limits of any municipality or cantonment board having a population of not less than ten thousand, up to a maximum distance of 8 kilometres from such

limits, for the purpose of this provision. Such notification will be issued by the Central Government having regard to the extent of and scope for, urbanisation of such area, and, when any such area is notified by the Central Government, agricultural land situated within such area will stand included within the term "capital asset". Agricultural land situated in rural areas, i.e., areas outside any municipality or cantonment board having a population of not less than ten thousand and also beyond the distance notified by the Central Government from the limits of any such municipality or cantonment board, will continue to be excluded from the term "capital asset".

20. The amendment to section 2(14), as stated in the preceding paragraph, applies from 1st April, 1970, i.e., for and from the assessment year 1970-71. However, by an amendment to section 47 of the Income Tax Act, it has been specifically provided that no capital gain or loss will be computed with reference to any transfer of agricultural land in India effected before 1st March, 1970.

21. The effect of the amendments to section 2(14) and section 47, as stated above, will be that capital gains arising from transfer of agricultural lands situated in the municipal and other urban on or after 1st March, 1970, will become liable to taxation even where such land was held for bona fide agricultural purposes, often as the main source of livelihood. With a view to relieving the burden of taxation on the capital gains in such cases, a provision has been made, in a new section 54B of the I.T. Act, for exempting from tax the capital gain arising from the transfer of agricultural land in certain circumstances. Under the new section 54B, where the capital gain arises from transfer of land which in the two years immediately preceding the date of transfer was being used by the assessee or a parent of his for agricultural purposes, and the assessee has, within a period of two years after that date, purchased any other land (whether in the same area or elsewhere) for being used for agricultural purposes, then the capital gain will not be charged to tax to the extent that it has been utilised for acquiring the fresh land. Where the amount of the capital gain exceeds the cost of acquisition of the fresh land, only the excess will be chargeable to tax. The concession will, however, be forfeited if the assessee transfers the fresh land acquired by him within a period of three years from the date of its purchase.

22. What emerges from this amendment is that agricultural lands when situated within the limits of a municipality whose population was not less than 10,000 and within the notified area of eight kms. will not be considered as agricultural lands but as non-agricultural lands. The said transformation or change is a statutory transformation and is the inevitable and logical consequence of the amendment. This occurs notwithstanding the earlier classification of the lands in the revenue records as agricultural lands and their user as agricultural lands by their owners or occupiers. With the growing urbanisation in the country and fast development of cities like Bangalore City, which is one of the fastest growing cities in the world, the land situated within the jurisdiction of the municipalities and within

eight kms. from the limit of the municipal areas which are really lands having potential as lands fit for building purposes, are treated as such and not as agricultural lands.

23. The amendment made to section 2(14) of the Act does not make any distinction and difference between "agricultural lands in India" and "lands used for agriculture". The language of the section read by itself or in conjunction with the other provisions of the Act, do not lend support to the theory that there is a difference and distinction between agricultural lands in India as defined in section 2(14) or lands used for agricultural purposes. Even otherwise, we do not find any distinction and difference between them at all. The distinctions and differences in such income can and must be in conformity with the Act and not in other manner. The income from the sale of such lands will not be revenue income but will be income from a capital asset and will naturally be capital gains chargeable to tax on that basis and no other. In other words, the user of lands for agriculture or other purpose cannot and does not make any difference to decide the nature of the gains made on the transfer of the capital asset. We are also of the view that this is the inevitable conclusion that flows from the ruling of the Supreme Court in *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*, , to which we will make a detailed reference at a later stage.

24. What we have expressed earlier is not in any way affected by the amendment made to section 2(1) of the Act by the amending Act. If anything at all, that amendment is also consistent with the amendment made to section 2(14) of the Act. The purposes of both are one and the same. We are also of the view that the proviso added to that section is not a proviso only to (c) of that sub-section but is a proviso governing clauses (a), (b) and (c) of that section. With great respect to their Lordship of the Bombay High Court, we regret our inability to subscribe to the view expressed in *Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another*, on this aspect.

25. Article 366 of the Constitution closely follows section 311 of the Government of India Act and the term "agricultural income" defined in that section has been bodily lifted and incorporated as article 366(1) of the Constitution. The distribution of legislative powers in the Constitution, closely follows the distribution of legislative powers in the government of India Act. Entry No. 54 of List I of the Government of India Act has been bodily lifted and enacted as Entry No. 82 of List I of the seventh Schedule to the Constitution. Entry No. 41 of List II of the Government of India Act has been bodily lifted and enacted as Entry No. 46 of List II (State List) of the Constitution.

26. Article 366 of the Constitution defines certain term that constantly occur in the Constitution. As an interpretation clause, article 366 provides that the term defined therein shall have the meaning ascribed to them unless the context otherwise requires.

27. Article 366(1) defines "agricultural income" as agricultural income as defined for the purpose of enactment relating to Indian Income Tax. For the purpose of the Constitution, unless the context otherwise requires, the meaning of the term "agricultural income" has to be gathered from the definition of that term "agricultural income" in the Income Tax Act in force mutatis mutandis becomes the definition of that term for the purposes of the Constitution also. With this as also under article 246(1) read with Entry No. 82 of List I (Union List) of the Seventh Schedule to the Constitution, the Union Parliament was competent to define that term for the purpose of the Constitution and the Act. The power to define comprehends in itself the power to amend or modify the same.

28. On the scope and ambit of article 366(1) of the Constitution, the Supreme Court in *Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy*, expressed thus (at pp. 472, 475 and 476) :

"It has also to be remembered that in spite of this demarcation between agriculture and forests in the Constitution, taxes on agricultural income are separate head under Entry No. 46 of List II of the Seventh schedule and would comprise within their scope even income from forestry operations provided it falls within the definition of agricultural income which according to the definition given under article 366(1) means agricultural income as defined for the purposes of the enactment relating to the Indian Income Tax.....

It was also pointed out that "Taxes on agricultural income" formed a head of legislation specified in item 46 of List II of the Seventh Schedule to the Constitution and should be liberally construed, with the result that agriculture should be understood in the wider significance of the term and all agricultural income derived from agriculture or understood should be included in the category. There was authority for the proposition that the expression "agricultural land" mentioned in Entry No. 21 of List II of the Seventh Schedule to the Government of India Act, 1935, should be interpreted in the wider significance as including lands which are used or are capable of being used for raising any valuable plants or trees or for any other purpose of husbandry (See *Sarojini Devi v. Shri Krishna Anjaneya Subrahmanyam* ILR (1945) Mad 61 ; and 1942 F.C.R. 53 (Federal Court))

While recognising the force of the above expression of opinion, we cannot press them into service in favour of the assessee for the simple reason that "agricultural income" has been defined in the Constitution itself in article 366(1) to mean agricultural income as defined for the purpose of enactment relating to Indian Income Tax and there is a definition of "agricultural income" to be found in section 2(1) of the Indian Income Tax Act. We have, therefore, got to look to the terms of the definition itself and construe the same regardless of any other consideration, though, in so far as the terms "agriculture" "agricultural purposes" are concerned, we feel free, in view of the same not having been defined in the Act itself, to consider the various meanings which have been ascribed to the same in the legal and other dictionaries."

29. What emerges from this enunciation is that the definition of the term "agricultural income" in the Income Tax Act becomes the definition of that term for the purpose of the Constitution.

30. When once it is found that Parliament is competent to define the term "agricultural income" in the Income Tax Act in force, which becomes the definition for the purposes of the Constitution, it follows from the same that power coupled with the other power of legislation derived from the Constitution necessarily comprehends the power to define the terms "capital asset" and "capital gains" which is only one of the species of "agricultural income". When the term "agricultural income" is defined or amended, the power of the State Legislature to legislate on "agricultural income" must be in conformity with that definition only. Even the extent and content of legislative power stands regulated by the definition of the term "agricultural income" in the Income Tax law of the country. The power of the State Legislature to legislate with respect to taxes on "agricultural income" itself stands denuded or curtailed to that extent.

31. We are of the view that the ruling of the Supreme Court in *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*, is very apposite on the above point. In the order to fully appreciate the same, it is useful to notice the legislation that was involved in this case and the exposition made therein in some detail.

32. The Kerala Agricultural Income Tax Act of 1950 (Kerala Act) as in other States had been enacted to levy agricultural Income Tax in the State. In 1961, an amendment made to that Act by the Kerala State incorporated an Explanation to section 5 of that Act which reads thus :

"Nothing contained in this section shall be deemed to entitle a person deriving agricultural income to deduction of any expenditure laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agriculture income has been derived during the previous years."

33. This amendment expressly denied the expenses incurred on the maintenance of and upkeep or maintenance of immature tea plants as a permissible deduction under the Kerala Act, though the same was allowed under the Central Income Tax Act and the Rules made thereunder for purposes of that Act and the Rules. *Karimtharuvi Tea Estate Limited*, which was engaged in raising and maintaining tea plantations and manufacture of tea thereof could not avail of the deductions of expenses incurred in the upkeep and maintenance of immature tea plants for purposes of the Kerala Act, challenged its validity before the Supreme Court principally on the ground that the same was not within the legislative competence of the Kerala State Legislature. In upholding that contention, the court, speaking through Raghubar Dayal J., read down the aforesaid provision and expressed thus (at pp. 86, 88, 90, 91, & 92)

34. Entry 46, List II of the Seventh Schedule to the Constitution relates to taxes on agricultural income. In view of clause (3) of article 246, the State Legislature

can enact laws about these taxes. Article 366 provides that unless the context otherwise requires, the expression "agricultural income" in the Constitution means agricultural income as defined for the purpose of the enactments relating to Indian Income Tax. Therefore, the agricultural income about which a State Legislature may enact under Entry 46 of List II would be such income as defined in the Indian Income Tax Act.....

35. It follows, therefore, that the power of the State Legislature to make a law in respect of taxes on agricultural income arising from tea plantations will be limited to legislating with respect to the agricultural income so determined. The State Legislature is free in the exercise of its plenary legislative power to allow further deductions from such computed agricultural income as it considers fit, but it cannot add to the amount of the agriculture deducted in the computation of the income from a business under the provisions of the Income Tax Act be not deducted and be considered to be a part of the taxable agricultural income.....(at p. 88)

36. It is true, as urged for respondents, that the State Legislature has full freedom to enact such provisions as it considers fit in respect of tax on agricultural income and that such power includes the power to enact for matters subsidiary and incidental to the taxation of agricultural income. We also agree that the State Legislature is free to provide the method of computation of the taxable agricultural income and is free to allow any particular deductions from the gross income as it considers fit. It is not disputed for the respondent that the power of the State Legislature to enact a law in respect of agricultural income relates only to such agricultural income as is defined in article 366 of the Constitution.....(at p. 90)

37. It is, however, urged that for the purpose of this definition, one has to look to the definition of "agricultural income" in the Income Tax Act and not to the Rules made thereunder. We do not agree. "Agricultural income" as defined in the Constitution means "agricultural income for the purpose of the enactments relating to income tax". One such enactment is the Income Tax Act. Rule 24 of the Income Tax Rules has been made under the powers conferred by section 59 of the Income Tax Act and has effect as if enacted in that Act. When section 59 of the Income Tax Act provides for the Rules made under that Act to prescribe the proportions of income from business, and income from agriculture in the entire income derived in part from agriculture and in part from business, the proportion so prescribed must be taken to be prescribed by the Act. These rules were in existence in 1950 when the Constitution incorporated the definition of "agricultural income" from the Income Tax Act by reference. The definition of the term was bound up with the Rules.

38. It has been further submitted for the respondents that clause (xv) of sub-section (2) of section 10 of the Income Tax Act is a general provision and should give way to the special provision of the Agricultural Income Tax Act with respect to the deductions from the gross income for the purpose of computing the

agricultural income. This cannot be, as we have to take the definition of "agricultural income" from what it is in the Income Tax Act. The provisions of the Income Tax Act and the Rules made thereunder will control the provisions of the Agricultural Income Tax Act enacted by a State Legislature.....(at p. 91)

39. We, therefore, construe Explanation 2 to section 5 of the Agricultural, Income Tax Act not to extend to the computation of agricultural income derived from tea plantations and hold that in computing such agricultural income for the purpose of taxation under the Agricultural Income Tax Act, the Explanation to section 2 of that Act must be kept in mind and the income must be taken to be as defined for the purposes of the enactments relating to Indian Income Tax." (at p. 92)

40. We are of the opinion that on this enunciation, which is in accord with the earlier enunciation made in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, , the Union Parliament was competent to define the terms "agricultural income", "agricultural land" and "capital asset" and thus bring to tax capital gains arising or accruing from agricultural lands situated within municipal limits and eight kms. of notified municipal areas, which had ceased to be agricultural lands.

41. Even otherwise, on the application of the well-settled rules of interpretation of the entries in the Seventh Schedule to the Constitution restated by the Supreme Court in SECOND-GIFT TAX OFFICER, MANGALORE Vs. D. H. NAZARETH., and by us in Mysore Kirloskar Ltd. and Others Vs. Union of India and Others, the Union Parliament was competent to legislate section 2(14)(iii) of the Act.

42. In Ambalal Maganlal Vs. Union of India and Another, , a Division Bench of the Gujarat High Court consisting of Divan C.J. and Mehta J., examining the challenge to the very provision on a similar ground has expressed thus (at pp. 250, 251 and 252) :

"It is also clear that by amending the appropriate definition in any enactment relating to Indian Income Tax, Parliament has the power to define what is meant by "agricultural income" and, by virtue of entry 82, it has power to levy a tax on income other than agricultural income as thus defined. Under these circumstances, it was competent for Parliament to enact section 2(14)(iii) so as to provide for tax on capital gains arising from agricultural lands which are under consideration in the present cases.....

The real ground, in our opinion, as regards competency of Parliament regarding taxation of income other than agricultural income, is to consider whether the land on the transfer of which the profits or gains are said to arise is possessed of all the characteristics of an agricultural land and has not acquired the potentialities of being put to industrial or residential or commercial use. Once the land under consideration has acquired any of these potentialities, it ceases to be, in our opinion, agricultural land for the purposes of the entries in the Lists in the Seventh Schedule. In any event, the legislation by Parliament providing for

taxation of capital gains, that is, on income, within the scope of entry 82 in List I of the Seventh Schedule, would be a piece of legislation, the pith and substance of which is the tax on income other than agricultural income and if that piece of legislation also affects lands which have ceased to have all the characteristics of agricultural land and thus acquired other characteristics, such encroachment on the other field of legislation is purely incidental and the doctrine of pith and substance would certainly apply to such a piece of legislation. Even on this doctrine of pith and substance which is well recognised by now in the field of constitutional law, the power of Parliament to enact section 2(14)(iii) can be upheld and on this ground also it can be said that it was competent for Parliament to enact section 2(14)(iii) and thus bring within the scope of section 45 read with section 47(viii) the gains or profits arising from transfer of capital asset as defined by section 2(14)(iii). The first two submissions made by Mr. Nanavati regarding the legislative competence of Parliament must, therefore, fail.

We must point out at this stage that we are not finding power in Parliament to enact section 2(14)(iii) under the residuary article 97 read with article 248 of the Constitution but fairly and squarely in entry No. 82 of List I of the Seventh Schedule."

43. We are in respectful agreement with these views expressed by their Lordships.

44. In *Manubhai A. Sheth and others Vs. N.D. Nirgudkar*, 2nd Income Tax Officer, A-II Ward, Bombay and another, , a Division Bench of the Bombay High Court consisting of Madan J. (as his Lordship then was) and Kania J. first construed the proviso appended to section 2(1) of the Act as a proviso only to clause (c) and then examined the challenge to section 2(14)(iii) on the very ground urged before us. We have earlier dissented with that construction placed by their Lordships. On the aforesaid construction of the proviso appended to section 2(1) of the Act, their Lordships then read down section 2(14)(iii) of the Act, exhaustively examined the several questions that were canvassed before them and then summarised their conclusions on the legislative competence in these words (at p. 137) :

"For the reasons given above, we hold that profits or gains arising from transfer of land which is used for agricultural purposes is revenue derived from such land within the meaning of sub-clause (a) of clause (1) of section 2 of the Income Tax Act, 1961, and is, therefore, agricultural income within the meaning of the said clause (1), and not exigible to a levy of Income Tax, including capital gains tax, by Parliament. We further hold that sub-clause (iii) of clause (14) of section 2 of the said Act does not operate, read with the other relevant sections of the said Act, to levy a capital gains tax on profits or gains arising from transfer of land which is used for agricultural purposes and must be read down so as to exclude from the operation of the said sub-clause land which is used for agricultural purposes even though it may be situated in any of the areas mentioned in para. (a) or para. (b) of the said sub-clause (iii) or, in other words, the said sub-clause

(iii) should be read as if the brackets and words "(other than land which is used for agricultural purposes)" occurred in the said sub-clause after the words "not being land". We further hold that read in this manner, the impugned sub-clause (iii) is not beyond the legislative competence of Parliament....."

45. With great respect, these conclusions reached by their Lordships with out giving full effect to article 366(1) of the Constitution, the ruling of the Supreme Court in The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others, which of course has been noticed and all other reasons on which we have reached a contrary conclusion are not sound. We, therefore, with great respect to their Lordships regret out inability to subscribe to their reasoning and conclusions reached in the case on the question.

46. On the foregoing discussion, we hold that there is no merit in the contention of the petitioner and we reject the same.

47. As the only contention urged for the petitioner fails, this writ petition is liable to be dismissed. We, therefore, dismiss this writ petition and discharge the rule issued in this case. But, in the circumstances of the case, we direct the parties to bear their own costs.