

(1970) 06 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 205 of 1967

Devon Tea and Produce Co. Ltd.

APPELLANT

Vs

Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 04-06-1970

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 2 (1), 2 (1) (v), 69

Citation : AIR 1971 Kar 50

Hon'ble Judges : G.K. Govinda Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; S.R. Rajasekhara Murthy, High Court Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Bhat, J.—The petitioner is a public limited company which owns plantations in the area of the former State of Mysore. The territories comprised in the former State of Mysore were integrated in the new State of Mysore formed on 1-11-1956 under the States Reorganisation Act, 1956. The Mysore Agricultural Income Tax Act 1955 was in force in the territories of the former State of Mysore and the petitioner was an assessee under the said Act.

2. The Legislature of the new State of Mysore enacted the Mysore Agricultural Income Tax Act, 1957 (Mysore Act No. XXII of 1957) hereinafter called the "Act" and it came into force on the first day of October, 1957. As the preamble of the Act shows, it was enacted to consolidate and amend the laws providing for the levy of a tax on the agricultural income from lands used for growing commercial crops in the State of Mysore. The Agricultural Income Tax Acts in force in the different areas integrated in the new State of Mysore were repealed by Section 69 of the Act; the repeal however saved the previous operation of the repealed enactments. Section 3 of the Act which is the charging section, charged agricultural income tax at the rates specified in Part I of the Schedule to the Act on the total agricultural income of the previous year of every person and that

charge was levied for each financial year commencing from 1st day of April 1957. Section 4 of the Act provided that the Act shall apply to all agricultural income derived from lands situated in the State of Mysore by any person whether resident in the State or not. Section 2 (1) (v) defined "State" to mean "State of Mysore".

3. For the financial year 1957-58 the petitioner was assessed to agricultural income tax on its income derived from the lands situated in the area of former State of Mysore during the accounting year ended 31-3-1957 by assessment order dated 30-12-1961 made by the Agricultural Income Tax Officer, Bangalore Circle, Bangalore. Under the said assessment Order tax was assessed at the rates provided under the Mysore Agricultural Income Tax Act, 1955. The petitioner appealed against the said order contending that for the assessment year 1957-58 it was not liable to be assessed under the Mysore Agricultural Income Tax Act, 1955 since the same had been repealed by Section 69 of the Act and that the assessment ought to have been made under the 1957 Act. The authorities under the Act having rejected that contention, the Commissioner of Agricultural Income Tax at the instance of the petitioner made a reference to this Court by its order in A. I. T. R .C. No. 5 of 1966. This Court by its order dated 7-10-1966 answered the said reference stating that the agricultural income of the petitioner for the period ended 31-3-1957 is taxable under the provisions of the Mysore Agricultural Income Tax Act, 1957 and not under the provisions of Mysore Agricultural Income Tax Act, 1955.

4. After the said decision, the respondent took steps to make an assessment on the petitioner for the assessment year 1957-58 under the Act and for that purpose issued a notice dated 18-1-1967. On 21-1-1967 the petitioner filed the above writ petition praying for a writ of prohibition or a direction in the nature of a writ of prohibition prohibiting the respondent from completing the assessment proceedings in the petitioner's case for the assessment year 1957-58 pursuant to the notice dated 18-1-1967.

5. In the affidavit filed in support of the writ petition, the petitioner raised two grounds, viz., (1) that the proceedings of the respondent are barred by limitation under the Act and (2) that the income derived from lands prior to 31-10-1956 was income derived outside the new State of Mysore and that the income derived subsequent to 31-10-1956 being the income of the part of the previous year, the same is not liable to be taxed as held by this Court in H.H. Bhairao Rao Maloji Rao Ghorpade Vs. Agricultural Income Tax Officer and Another, . The said decision however was set aside by the Supreme Court by its judgment dated 3-5-1967 in State of Mysore v. Bhairao Rao Maloji Rao Ghorpade, Civil Appeals Nos. 1176 to 1178 and 1180 of 1965 (Mys). The Supreme Court after setting aside the judgment remanded the case for disposal in the light of its judgment.

6. During the pendency of the above mentioned appeals before the Supreme Court, the Mysore Legislature amended the definition of the "State" or "State of Mysore" occurring in S. 2(1)(v) of the Act by Mysore Act No. XXV of 1962-

Section 2 of the Amending Act reads as follows:-

"2. In Sub-section (1) of Section 2 of the Mysore Agricultural Income Tax Act, 1957 (Mysore Act 22 of 1957) (hereinafter referred to as the Principal Act) for Clause (v), the following clause shall be and shall always be deemed to have been substituted, namely:-

(v) "State" or "State of Mysore" means the State of Mysore comprising the territories specified in Clauses (a), (b), (c), (d) and (e) of Sub-section (1) of Section 7 of the States Reorganisation Act, 1956 (Central Act No. 37 of 1956)." The Supreme Court was of the opinion that the effect of the said amendment is that agricultural income derived from lands situated in the territories specified in Clauses (a) to (e) of Sub-section (1) of Section 7 of the States Reorganisation Act is sought to be made liable to tax under the Act even for the period prior to 1-11-1956. This Court in H.H. Bhairao Rao Maloji Rao Ghorpade Vs. Agricultural Income Tax Officer and Another, relying on the definition of the words "State" or "State of Mysore" came to the conclusion that the assessee was not liable to tax in respect of the agricultural income derived from lands situated in the new State of Mysore for the reason that during the part of the previous year the lands were situated in the State of Bombay. The said argument, according to the Supreme Court does not survive now, because by the amended definition of the words "State" or "State of Mysore", all the lands in the territories specified in Sub-section (1) of Section 7 of the States Reorganisation Act are expressly covered. The learned Counsel for the assessee before the Supreme Court relying on the decision in N.N. Ananthanarayana Iyer and Others Vs. Agricultural Income Tax and Sales Tax Officer and Others, urged that Mysore Act No. 25 of 1962 amending the definition of the words "State" or "State of Mysore" is ultra vires of the Constitution in so far as it has extra territorial effect. The Supreme Court remanded the case since the new question raised had not been considered by this Court.

7. Since the grounds raised in the first instance are no longer tenable in view of the decision of the Supreme Court, the petitioner with the leave of the Court raised two additional grounds; firstly, that the Amending Act No. 25 of 1962 read with Sections 3 and 4 of the Act in so far as it seeks to tax agricultural income derived from lands situated in the former State of Mysore before 1-11-1956 is unconstitutional and secondly, that the Mysore Agricultural Income Tax Act, 1955 having been repealed only with effect from 1-10-1957, the period upto that date is governed by that Act and Section 3 of the said Act which seeks to charge to tax the agricultural income for the same period is repugnant to Section 69 of the Act and therefore unenforceable. At the hearing Sri K. Srinivasan, the learned counsel for the petitioner restricted his arguments to the new grounds he has raised.

8. Before dealing with the constitutional issue we will dispose of the second ground urged by the learned counsel for the petitioner.

9. In *Bombay Burmah Trading Corpn. Ltd. v. Commr. of Agricultural Income Tax*, W. P. No. 432 of 1961 (Mys) on the file of this Court decided on 30-7-1962 a Bench of this Court (Hegde and Khan, JJ.) held that for the assessment year 1957-58 the assessee in respect of agricultural income derived from lands in Coorg is liable to be assessed under the Coorg Agricultural Income Tax Act of 1951. In *Keshavamurthy Chetty v. The Agricultural Income Tax Officer, Chickmagalur*, (Writ Petn. No. 1416 of 1960 (Mys) on the file of this Court) another Bench of this Court (Hegde and Iqbal Hussain, JJ.) held that the agricultural income of the assessee derived from lands in the area of the former State of Mysore during the previous year 1957-58 is liable to be taxed under the Mysore Agricultural Income Tax Act, 1955 and not under the Act. In *Mallikarjunappa v. Agricultural Income Tax Officer, Chickmagalur* (1964) 52 ITB 778 the Bench consisting of Hegde and Khan, JJ. without reference to the earlier decisions mentioned above took a contrary view holding that for the assessment year 1957-58 the assessee is liable to be taxed under the Act. In *Devon Tea and Produce Co. Ltd. v. The State of Mysore*, (A. I. T. B. C. No. 5 of 1966 (Mys) on the file of this court) a Bench consisting of Hegde and Bhimiah, JJ. held that for the assessment year 1957-58, the income of the petitioner is not liable to be assessed under the 1955 Act but under the Act. We are inclined to agree with the earlier decisions and in the ordinary course would have been disposed to refer the question to a larger Bench but in the special circumstances of the case, it is not necessary to do so. When the petitioner was assessed under the 1955 Act for the assessment year 1957-58 by order dated 30-12-1961, it "took the stand that the Company is liable to be assessed not under the 1955 Act but under the 1957 Act. The reason for that stand of the petitioner is quite obvious. Before the date of the assessment, the Court in *H.H. Bhairao Rao Maloji Rao Ghorpade Vs. Agricultural Income Tax Officer and Another*, case decided on 6-9-1961 had held that for the assessment year 1957-58 no assessment is possible under the Act and the petitioner wanted to take advantage of that decision. In A. I. T. R. C. No. 5 of 1966 (Mys) this Court accepted the contention of the petitioner that it is liable to be taxed under the 1957 Act. The petitioner cannot take inconsistent positions at different stages of the assessment for the same year. In view of the specific answer given by this Court in A. I. T. R. C. No. 5 of 1966 (Mys) it is not open to the petitioner to contend that its income derived during the relevant previous year is liable to be assessed under the "1955 Act and that Section 3 of the Act being repugnant to Section 69, is unenforceable.

10. We will now deal with the main question relating to the constitutional validity of the Act. The argument of Sri K. Srinivasan was that Sections 3 and 4 of the Act read with Section 2 (1) (v) as amended by Mysore Act No. 25 of 1962 in so far as they seek to bring or charge to tax the agricultural income derived before 1-11-1956 from lands situated in the territories of the former State of Mysore are unconstitutional. In support of the said contention, the learned counsel relied on the decision in *N.N. Ananthanarayana Iyer and Others Vs. Agricultural Income Tax and Sales Tax Officer and Others*, . A new State to be known as the "State of

Kerala" comprising the territories specified in Clauses (a) and (b) of Sub-section (1) of Section 5 of the States Reorganisation Act was formed with effect from 1-11-1956. The District of Malabar was separated from the Madras State and integrated in the New State of Kerala. Before 1-11-1956, in the District of Malabar the Madras Plantation and Agricultural Income Tax Act, 1955 was in force. In Travancore and Cochin State which was integrated with the new State of Kerala, the Travancore Cochin Agricultural Income Tax Act 1950 was in force. The legislature of the State of Kerala amended the Travancore Cochin Agricultural Income Tax Act 1950 by Kerala Act No. 8 of 1957 by which the principal Act was extended to the whole State of Kerala. When assessment was made under the Travancore Cochin Agricultural Income Tax Act, 1950 as amended by Kerala Act No. 8 of 1957 for the assessment year 1957-58 on the income derived from lands situated in Malabar District during the relevant previous year, the assessee challenged the said assessments before the Kerala High Court on the ground that the Kerala Legislature was not competent to tax the income derived before 1-11-1956 from land situated in the District of Malabar when it was in Madras State. The Full Bench of the Kerala High Court upheld the contention of the petitioners and quashed the assessments on the ground that the State's power of taxation can have no extra territorial operation, that the lands of the assessee situated in the district of Malabar were in Madras State before 1-11-1956 and that the Kerala State had no jurisdiction to levy tax from lands in the State of Madras.

11. The law of a State can operate only on its own territory and cannot have extra territorial operation. Article 245 of the Constitution of India states that the Legislature of a State may make laws for the whole or any part of the State. With respect to the matters on which the State is competent to legislate under Article 246 of the Constitution read with Schedule VII, its legislative power is supreme; it can legislate prospectively as well as retrospectively. The subject "Tax on agricultural income" is found in entry No. 46 of List II of the Seventh Schedule of the Constitution of India and therefore the State has got exclusive power of legislation on that subject. As stated in sub-section (2) of Section 1 of the Act, the Act extends to the whole State of Mysore. The expression State of Mysore has been defined in Section 2 (1) (v) to mean the State comprising the territories specified in Clauses (a) to (e) of Sub-section (1) of Section 7 of the States Reorganisation Act.

12. Prima facie, the Act has no extra territorial operation since it extends only to the State of Mysore. But it was argued that since the Act seeks to tax the income derived from lands prior to 1-11-1956, the Act has extra territorial effect.

13. A State may tax those taxable subjects only that are within its territorial boundaries. The principles that determine what taxable subjects are within its boundaries vary with the type of tax involved. In the case of income tax, the subject of taxation is said to be within the jurisdiction of the State if the source from which the taxable income is derived is situated in the State or the person

whose income is taxed is resident there. It is not sufficient if the person whose income is taxed is resident in the State in the taxing year but he must be resident in the State in the year in which the income is derived vide *Rottschaefer* on Constitutional Law 1939 Edition pages 638, 657-660 and *Trinidad Lake Asphalt Operating Co. v. Commr. of Income Tax for Trinidad and Tobago* 1945 AC 1. Applying the above principles, we have to see whether there is territorial nexus between the State levying the tax and the subject of charge. The Act has chosen the nexus of the source from which income is derived. Section 4 says that the Act shall apply to all agricultural income derived from lands situate in the State of Mysore by any person whether resident in the State or not. Part of the income during the relevant accounting period was derived from lands of the petitioner when the said lands were situated in the former State of Mysore. The former State of Mysore had full legislative competence to levy agricultural income tax on the income derived from lands situated in its territory. Similarly, the States of Bombay, Madras, Hyderabad and Coorg were competent to levy tax on agricultural income derived from the lands in their respective territories before 1-11-1956. We have already referred to the existing Agricultural Income Tax Acts in the integrating areas of the new State of Mysore. The existing laws in force on 1-11-1956 continued to operate in their respective areas even after 1-11-1956 by virtue of Section 119 of the States Reorganisation Act. The legislature of the New State of Mysore was competent to amend the Mysore Agricultural Income Tax Act, 1955. It could have also enacted an Act levying tax on the agricultural income derived from lands in the Bombay area where there was no Agricultural Income Tax Act in force on 1-11-1956. It was also open to the Legislature of the New State to consolidate and amend the laws providing for the levy of tax on agricultural income for the entire new State. The new State of Mysore being the "Successor State" its powers in relation to the territories integrated in the new State are co-extensive with the powers of the former States of Mysore, Coorg, Hyderabad, Bombay and Madras. Whatever tax the former State of Mysore could have levied in relation to its territory could be levied by the new State of Mysore by retrospective or retroactive legislation. When the territory of a State is transferred to another State or a State is merged in another State, the successor State has all the powers of the predecessor State in relation to the transferred or merged territories. It is significant to note that the Act by levying charge on the income derived from the lands before 1-11-1956, the New State of Mysore is not encroaching on the power of taxation of any other State or States. If the contention of the petitioner is accepted, it would follow that in respect of the assessment year 1957-58 the new State of Mysore and other new States formed under the States Reorganisation Act cannot exercise the legislative power to levy tax on agricultural income conferred by the Constitution. The transfer of the territories to the New State of Mysore gives sufficient territorial connection, in our view, to levy tax on the income derived from the said land even prior to 1-11-1956. Therefore the Act does not suffer from the vice of extra territorial legislation. We respectfully dissent from the view taken by the Full Bench of the Kerala High Court.

14. For the above reasons, the writ petition fails and is dismissed but in the circumstances no costs.