

(1991) 02 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petitions No"s. 11741 to 11798 of 1989

J. Seetha Rama Sastry

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 01-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 276 (2), 304 (b)

Citation : (1991) ILR (Kar) 3053 : (1993) 199 ITR 588

Hon'ble Judges : K.B. Navadgi, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : E.R. Indrakumar, for the Appellant; H.L. Dattu, for the Respondent

Judgement

K. Shivashankar Bhat, J.—In all these writ petitions an identical question is involved wherein the petitioners have sought the striking down of item No. 20 of the Schedule to the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 ("the Act" for short), as substituted by the Karnataka Amendment Act No. 15 of 1989.

2. For the sake of convenience, the facts in the first of these writ petitions are referred to wherever necessary.

3. The Act was enacted in the year 1976 to provide for the levy and collection of tax on professions, trades, callings and employment in the State. The rate of tax and the person charged with the tax are enumerated in the Schedule to the Act. Item No. 20 to the Schedule was substituted by Karnataka Act No. 15 of 1989, with effect from April 1, 1989. By virtue of this of this each partner of firm registered under the Indian Partnership Act and engaged in any profession, trade, calling or employment is levied with an annual tax of Rs. 500. This provision is challenged as violative of article 14 of the Constitution as well as article 276(2) and 304(b) of the Constitution of India. The attack under article 14 arises primarily because the tax is imposed only on a partner of a firm registered under the Partnership Act. But no such tax is imposed on similar partners of

unregistered firms. According to the petitioners there is no qualitative difference between the partner of a registered firm and the partner of an unregistered firm; both are engaged in carrying on trade or business a partner of the firm and, therefore, picking out only one set of partners for the levy is patently arbitrary.

4. Under article 276(2), the total amount payable as tax on profession, trade, calling or employment by any one person cannot exceed Rs. 250 per annum. Here each partner is levied with an annual tax of Rs. 500. The number of partners of the firm of which the petitioners are partners exceed 5, in some case there are nearly 20 partners; in such a case the total tax paid in respect of the business of the firm will exceed Rs. 250 and, therefore, article 276(2) stands contravened by the levy. The petitioners also contended that the levy affect the freedom of trade and commerce and, therefore, article 304(b) is contrived. Before considering these contentions, it is also necessary to note that this item No. 20 was again substituted by another entry and by virtue of these subsequent substitution, the levy is now on each partner of a firm, whether the firm is registered or not.

5. Certain notifications issued under the Act are also necessary to be noted. As per notification No. I dated May 3, 1989, the Government of Karnataka exempted the tax payable by any firm registered under the Indian Partnership Act and engaged in any profession, trade, calling or employment, except those specified in sl. Nos. 5(b), 7(b), 13(a), 15(a), 20C(a) and 20E(b) of the Schedule. There is another Notification, viz., No. II of the same date exempting the tax payable by any partner of a firm registered under the Indian Partnership Act and engaged in any profession, trade, calling or employment specified in sl. Nos. 5(b), 7(b), 13(a), 15(a), 20C(a) and 20E(b). By virtue of the main part of notification No. I, a firm is exempted from taxation; but in the cases falling, for example, under item No. 15(a), that exemption is not available. In other words, in the case of those excepted categories like item No. 15(a), the firm is liable. Notification No. II, in such a situation, grants the exemption to the partners of such a firm. Thus, in the case of the firms whose liability to tax is kept alive by Notification No. I, then its partners are exempted (i.e., those falling under specified items only). The idea is to collect the tax from the firm in one case and exempt its partners. Item 20 is not the subject-matter of specification either under Notification No. I or No. II. Therefore, literally, the partners of a registered firm are liable to tax at the rate of Rs. 500 per annum; but this has to be read, to be in harmony, with the two notifications.

6. The petitioners are partners of a firm and are carrying on money lending business. The business of money-leading is taxed under item No. 15 which reads as follows :

"15. Money Lenders under the Karnataka Money Lenders Act, 1961.

(a) Class-I Money Lenders and who lend rupees ten lakhs and above per annum Rs. 2,500 p.a.

(b) Others Rs. 250 p.a."

7. Notification No. 1 specifies item 15(a). Therefore, the firm is liable to pay the profession tax under item No. 15(a). By virtue of Notification No. II, the partners of the firm are exempted from paying the tax under item No. 15(a).

8. Explanation I do the Schedule has to be noted here. It reads as follows :

"Explanation 1. - Notwithstanding anything in this Schedule where a person is covered by more than one entry in the Schedule the highest rate of tax specified under any of those entries shall be applicable in his case."

9. There is no dispute that the partnership firms of the petitioners are registered under the provisions of the Indian partnership Act. They are engaged in the business of finance and money-lending. According to the petitioners, the amount lent by each of the said firms does not exceed Rs. 10 lakhs per annum. Therefore, item No. 15(a) is not applicable. If so, they fall under item No. 15(b). In the case of item No. 15(b), the firms are exempted by virtue of notification No. I. The Petitioners are burdened with tax at the rate of Rs. 500 per annum because each of them is a partner of a registered firm. According to the petitioners, this again brings out the discriminatory character of the levy because a higher tax is collected from all the partners together, under item No. 20, in respect of the business carried on by the firm, even though the firm is not a class-I money-lender while, under item No. 15(a), the tax levied on class-I money-lender is only Rs. 2,500. The petitioners have highlighted the fact that, in the case of the partner of an unregistered firm, such partner are not at all liable under item No. 15(a); the state has not explained the reasons for such a classification.

10. We are of the view that it is not necessary to consider elaborately the scheme of the Act and the impact on the various notification to decide the main question involved in these writ petitions. If item No. 20 cannot stand the test of validity, no further question would arise. The charging section is section 3. As per section 3(1), the tax is levied on professions, trades, calling and employments. There is no doubt that this is a revenue collecting legislation. As per section 3(2), the tax is collected from any person who exercises any profession or calling or is engaged in any trade, etc. Therefore, the subject of levy in the instant case is the trade but the liability to pay the same is on the person who is engaged in the trade. Section 3(2) further states that the rate the liability are to be as per the Schedule.

11. As per section 2(h), "person" means any person and includes a firm (other details of the definition omitted here). Therefore, for the purpose of this Act, there is a clear declaration that the firm is a person. In fact the decision of this court in V.B. Kori Vs. Assistant Professional Tax Officer, , held, while construing the earlier entry No. 20 and the scheme of the Act, thus (at page 280) :

"It is the specific of the appellant that he is carrying on his profession of tax

consultancy only through the firm as a partner and not in his individual capacity at all. It is not the case of the Revenue that the appellant is carrying on his profession apart from the profession in the firm. Therefore, he could be taxed either under entry 2 or under entry 20 of the Schedule to the Act. But, when he is not carrying on his profession as an individual but not as a member of the firm, then entry 20 is attracted. If he is carrying on his profession as a partner of a firm and that is to be taxed, there is no separate provision attracting tax under the Act, as it stood then. Whatever may be the definition of the term "person", which includes artificial persons such as firm, etc., it does not create any charge in respect of a firm as well as a partner of that firm and the charging section covers only persons enumerated in the Second Schedule which specifically provides for levy of tax on firms carrying on a profession. Therefore, it is clear that under the scheme of the Act when a firm is taxed, a partner of that firm cannot be taxed separately."

12. Under the earlier entry No. 20, a firm which was engaged in any profession, trade or calling or employment was liable to tax at a particular rate. The question was whether the partners could be individually taxed as well as the firm in respect of the same trade, calling or profession. This court negated the claim of the Revenue. It was pointed out that the scheme of the Act was that, when a profession is carried on by an individual person in his individual capacity, a different entry was attracted (entry 2 in the said case because it was the case of a "tax consultant") and when he carries on the profession through a firm, entry No. 20 is attracted. Under the present entry No. 20, instead of the firm, each partner of the firm is taxed. But interestingly the partner is not taxed with reference to the particular trade or vocation as in other entries but taxed at the rate of Rs. 500 per annum just because he is a partner of a registered firm.

13. The decision of this court in V.B. Kori Vs. Assistant Professional Tax Officer, referred above also shows that there is a distinction between the profession of an individual and the profession of a person when he carries on the same as a partner of a firm. The said observation would equally be applicable to the case of a business.

14. Before considering further about the main contention involving the validity of the present entry No. 20, the legal status of a firm will have to be considered. In *State of Punjab v. Jullundur vegetables syndicate* [1966] 17 STC 326, the Supreme Court held that though, under the partnership law, a firm is not a legal entity but only consists of individual partners for the time being, for tax law (income tax as well as sales-tax), the firm is a legal entity. This is because of the special provisions contained in the taxing law. At page 331, the Supreme Court has observed thus :

"The first question is whether a firm is a separate assessable entity for the purposes of the Act or whether it is only a compendious term used to denote a group of partners. The definition of dealer of "dealer" takes in three categories of assessable units, namely, a person, a firm or a Hindu joint family. The

substantive and the procedural provision of the Act prescribe the mode of assessment and realisation of the tax assessed on such a dealer. If we read the expression "firm" in substitution of the word "dealer", it will be apparent that a firm is an independent assessable unit for the purpose of the Act. Indeed, a firm has been given the same status under the Act as is given to it under the Income Tax Act. u/s 3 of the Income Tax Act also, a "firm" is treated as a unit of assessment and as a distinct assessable entity. Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, Income Tax as well as sales-tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be legal entity. Thereafter, on principle, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm which ceased to have a legal existence."

15. The object of the Act here is to levy tax on professions, trades, etc. : The subject of the levy, therefore, is the "occupation"; the person who exercises the profession or is engaged in the trade is liable to pay the tax. The liability to pay the tax is fastened on the person who indulges in a particular occupation. Therefore, it has to be seen whether there is an intelligible differentiation between partners of an unregistered firm and partners of a registered firm in the matter of carrying on a trade by them, and whether there exists a qualitative difference between them in the matter of carrying on the trade or occupation.

16. Registration of a partnership under the provisions of the Partnership Act is purely optional. It has no relevancy to the validity of the constitution of the firm or regarding the inter se rights of the partners. Registration is required only for certain limited purposes and non-registration affects the procedural rights of the partners, as per section 69 of the Partnership Act; even here, the firm or the partners may have the effect of non-registration removed, by getting it registered at the time of filling a suit. The liabilities of the firm and of its partners towards third parties is not at all affected by non-registration is substantially procedural, affecting inter se claims amongst the partners, and the right of the firm to enforce its claims against third parties.

17. Liability to pay tax either by the firm or by the partners is not an inter se liability amongst the partners. It is the claim of the State against the firm or the partners. The differential treatment meted out in respect of the partners of a non-registered firm, thus, runs counter to the scheme of the Partnership Act, especially the object behind section 69. By the impugned provision, an advantage is conferred on those who fail to register the firm under the Partnership Act. As per section 69(3), the procedural disability of an unregistered firm and its partners is again limited and the disabilities do not govern cases falling u/s 69(3) and section 69(4) of the Act.

18. In the matter of formation of a partnership, its constitution, the rights and liabilities of the partners and their relationship to the firm and in the mode of carrying on of the trade, non-registration of the firm under the Partnership Act

has no relevancy at all.

19. It is true that the State is given a vast latitude in the matter of classification of subjects for taxation. In the field of fiscal legislation, very rarely court interfere, being aware of the magnitude of the problems to be solved by the State. But, does this mean that the citizens of this country should always surrender their valuable fundamental right to equality in favour of the State's power to tax ? Should the court hesitate to strike down a fiscal law solely on the ground that the revenue of the State would suffer ? Should the role of the court as the guardian of the fundamental rights of the people be held confined to non-fiscal spheres only ? Glaring inequalities resulting from any legislation cannot be allowed to impinge the equality rights. No motive is attributable to the legislation; inequality need not be purposeful; the validity of the law does not depend upon the broad objectives sought to be achieved by the law; the law's impact on the rights of the people has to be examined. In *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, the Supreme Court observed :

Under the Constitution, protection against impairment of the guarantee of fundamental rights is determined by the nature of the right, the interest of the aggrieved party and the degree of harm resulting from the State action. Impairment of the right of the individual and not the object of the State in taking the impugned action, is the measure of protection. To concentrate merely on power of the State and the object of the State action in exercising that power is therefore to ignore the true intent of the Constitution. In court, there is, however, a body of authority that the nature and extent of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual, but by its object. Thereby the constitutional scheme which makes the guaranteed rights subject to the permissible restriction within their allotted fields fundamental got blurred and gave impetus to a theory that certain articles of the Constitution enact a code dealing exclusively with matters dealt with therein, and the protection which an aggrieved person may claim is circumscribed by the object of the State action."

20. The court proceeded to say (40 Comp Cas 356) :

"Again to hold that the extent of, and the circumstances in which, the guarantee of protection is available depends upon the object of the State action, is to seriously erode its effectiveness. Examining the problem not merely in semantics but in the broader and more appropriate context of the constitutional scheme which aims at affording the individual the fullest protection of his basic rights and on that foundation to erect a structure of a truly democratic polity, the conclusion, in our judgment, is inevitable that the validity of the State action must be adjudged in the light of its operation upon the rights of the individual and groups of individuals in all their dimensions."

21. In *S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others*, , one of the questions pertained to the validity

of the second proviso to section 34(3) of the Indian Income Tax Act, 1922. The proviso made a distinction between two sets of tax evaders; the impugned proviso removed the bar of limitation to take action against one set of tax evaders, though basically there was no difference qualitatively between the two sets. The facts and the insignificant distinction between the two sets are brought out in the following observations at page 1363 (of 49 ITR 11(SC) (of S. K. Das. J.) :

"... the person with regard to whom a finding or direction is given and persons with regard to whom no finding or direction is given belong really to the same category, namely, the category of persons who are liable to pay tax and have failed to pay it for one reason or another. Admittedly, persons who are liable to pay tax and have not paid it could not be proceeded against after the period of limitation, unless a finding or direction with regard to them was given by some tribunal under various section mentioned in the proviso; therefore out of the large category of people who were liable to pay tax but failed to pay it, a certain number is selected for action by the proviso and with regard to that small number the right of limitation given to them is taken away. The real question is, is there any rational basis for distinguishing between persons who are liable to pay tax and have failed to pay it and with regard to whom a finding or direction is given, and persons who are liable to pay tax and have failed to pay it and with regard to whom no finding or direction is given. I am in agreement with the view expressed by the learned Chief Justice that no rational basis has been made out for the distinction between the two classes of people referred to above, who really fall in the same category and with regard to whom there was no difficulty in having a uniform provision of law. I am further in agreement with the view of the learned Chief Justice that the principle laid down by this court in *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, , applies. In that case sub-section (4) of section 5 of the Taxation on Income (Investigation Commission) Act was challenged and this court pointed out that there was nothing uncommon either in properties or in characteristic between person who were discovered as evaders of Income Tax during an investigation conducted u/s 5(1) and those who were discovered by the Income Tax Officer to have evaded payment of Income Tax. Both these kinds of person really belonged to the same category and therefore required equal treatment. This court pointed out that section 34 of the Indian Income Tax Act and sub-section (4) of section 5 of the impugned Act dealt with persons who had similar characteristics and properties and therefore a different treatment of some out of the same class offended the equal protection clause embodied in article 14 of the Constitution. It seems to me that the position is the same here. Whether person who evade tax are discovered by means of a finding given by tribunal or they are discovered by any other method, they really belong to the same category and therefore require equal treatment. The second proviso to sub-section (3) so section 34 which came into effect from April 1, 1952, patently introduced an unequal treatment in respect of some out of the same class of persons. Those whose liability to pay tax was discovered by

one method could be proceeded against at any time and no limitation would apply in their case, and in the case of other the limitation laid down by sub-section (1) so section 34 would apply. This in my opinion is unequal treatment which is not based on any rational ground."

22. At page 1376, (49 ITR 37(SC)) Kapur J., observed :

"... if there are no particular qualities and element which distinguish one set of evaders of Income Tax from another and both have evaded Income Tax their cases fall u/s 34(1) before and after 1948 or before and after 1953. From the mere fact that in regard to one a direction is given or an order is made within the second provision to section 34(3) and in regard to another it is not given, no reasonable basis for classification arises as their essential characteristics are the same."

23. These views were concurred with by Sarkar J. at page 1381 (at page 46 of 49 ITR (SC)) and the reasons are found in another decisions rendered on the same day in Commissioner of Income Tax Vs. Sardar Lakhmir Singh, .

24. In State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, , the reasonableness of the classification of land for the levy of land revenue, on the basis of the extent of the way a cut of which the land formed a part, came up for consideration. The Supreme Court held that the basis of classification was arbitrary and set aside the levy. The principle applied is found at page 1468 :

"A statutory provision may offend article 14 of the Constitution both by finding differences where there are none and by making no difference where there is one. Decided case laid down two test to ascertain whether a classification is permissible or not, viz., (i) the classification must be found on an intelligible differential which distinguishes person or things that are grouped together from other left out of the group; and (ii) that the differential must have a rational relation to the object sought to be achieved by the statute in question. The said principles have been applied by this court to taxing statutes."

25. The requirement of a qualitative difference between the persons classified differently under a legislation is again brought out by the Supreme Court in Rattan Arya and Others Vs. State of Tamil Nadu and Another, . The question was where there was an intelligible difference between residential tenants who pay a monthly rent exceeding Rs. 400 and the non-residential tenants; the law protected the non-residential tenants, but not such residential tenants. After to the objects of the law in question, it was observed at page 1446 :

"For the advancement of these objects, tenants are invested with certain right and landlords are subjected to certain obligations. These rights and obligations, for example, the right of a tenant not to be evicted and the prohibition against a landlord from seeking except upon specified grounds, the right of a tenant not to pay rent in excess of the fair rent and the obligation of a landlord not to demand such excess rent, and advance paid by him and the right of a tenant to enjoy and

the obligation of landlord not to interfere with the enjoyment of the amenities previously enjoyed by the tenant, are right obligations which, in any modern civilized society, attach themselves to tenants and landlords of all buildings, residential or non-residential, low-rent or high-rent. They are not rights which are peculiarly capable of enjoyment by occupants of non-residential building only as against occupants of residential buildings or by of low-rent buildings only as against occupants of high-rent buildings. None of the main provisions of the Act, to which we have referred, make any serious distinction between residential and non-residential building."

26. At page 1447, it was held :

"To say that a non-residential building is different from a residential building is merely to say what is self-evident and means nothing. Tenants of both kinds of buildings equally need the protection of the beneficent provisions of the Act."

27. Consequently, the provisions excluding the residential building from the operation of the Act was struck down.

28. In re the Special Courts Bill, 1978 In Re: The Special Courts Bill, 1978, the relevant tests are stated a page 509 : Points 4, 7 and 8 stated therein are :

"4. The principle underlying the guarantee of article 14 is not that the same rule of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstances shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the person grouped together and not in other who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differential which distinguished those that are grouped together from other and (2) that that differential must have a rational relation to the object sought to be achieved by the Act.

8. The differential which is the basis on the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while article 14 forbids class discrimination by conferring privilege or imposing liabilities upon persons arbitrarily selected out of large number of other person similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation such classification is not

arbitrary in the sense abovementioned."

29. By the application of these principles, we have no doubt that the law in question has picked up only one set of partners out of large class of partners of firms for separate treatment and imposed on the partners of registered firms alone the tax, under entry No. 20, even though there is no qualitative difference between the partner of a registered firm and those of an unregistered firm.

30. It was contended by the learned Government Pleader that, where a firm is registered, partners can easily be identified and if partners of non-registered firms also are included for the levy, it may lead to large scale evasion, because there is no means to find out the partner of an unregistered firm. This argument, in effect, is to say that only honest tax payers are liable to pay the tax and those who can easily evade the tax would not be taxed. Under the Act, every assessee has to voluntarily pay the tax and if someone evades the tax, appropriate machinery under sections 11 and 12 of the Act can be resorted to. The basis for the classification thus sought to be made out by the learned Government Pleader, is not a legal basis at all.

31. Under the entry No. 19 of the Maharashtra Act 16 of 1975, a similar levy is imposed on the partners of a registered firm and similarly challenge was negative on the ground that :

"Fiscal measures, unless they are to be the counterparts of paper tigers, should be easy of operation. They should be known to those liable to pay, as also those who have to exact the same. The administrator's difficulty in locating partners of unregistered firms as obvious."

32. This decision of the learned single judge (in W. P. No. 63 of 1986, etc. dated April 29, 1987 - Krishnakant Shivabai Patel's case), we are told, was affirmed by a Bench of the Bombay High Court, but we do not have the benefit of the Bench's decisions. With utmost respect to the learned single judge, we cannot agree with his reasoning. In fact, while considering the scope of article 276 and the liability of the firm to pay the tax as legal entity, the learned judge observed, at para 11 (page 14) :

"In the eyes of law, the registered firm has no existence. That its recognized as person in the definition, does not give it an existence distinct and apart from the partners constituting it. Under amended entry No. 19 a registered firm was being taxed. Therefore in including such a firm in the definition, the legislature was doing no more than avoid any disputations in regard to the taxability of an entity not having a juristic existence. The aim of the entry was the collective made up of partners. The change did no more than effect a difference in the mode and quantum payable by the partners where they paid a lesser amount as one unit in the name the adopted for their joint venture, the amendment made them (i) pay tax at a higher rate, and (ii) as separate units. Significantly, the Revenue never tried to reach the registered firm of unamended entry No. 19, under entry 8, on the plea that there was a difference between registration under persons, and

therefore, both being liable. In principle, there is no reason why the same restraint should not be shown between the entities of entry 8 and amended entry 19. This would be in conformity with article 276(2), section 3 and most important item II of the Schedule. The Tribunal did not therefore err in repelling the Revenue's contention."

33. By the same reasoning, it should have been held that registration of a firm under the Partnership Act has no relevance to the status of the partners and the latter are in no way different from the partners of an unregistered firm.

Re : Article 276(2) :

34. We are not expressing any final opinion on this question. Since arguments were addressed on this question, we state our prima facie view. It was contended that the tax payable by all the partners of a firm, when the number of partners is more than five, will exceed Rs. 250; the tax being on the trade or business which is actually carried on by the firm, any levy in excess of Rs. 250 will render the levy invalid, as violative of article 276(2) of the Constitution. The contention is that a firm is a "person", and as per article 276(2), the total amount payable "in respect of any one person" shall not exceed Rs. 250. Article 367 of the Constitution was referred to attract the provisions of the General Clauses Act, 1897, wherein, as per section 3(42), "person" shall include any company or association or body of individuals, whether incorporated or not. When two or more persons combine to carry on a business, it is the business of all the partners, jointly referred to as the firm and, therefore, the contention is that the levy of the tax is on the business of the firm as a "person" and this tax shall not exceed Rs. 250. Section 4 of the Partnership Act was referred to contend that business carried on by one partner is actually on behalf of all the partners and, therefore, it is the business of the firm as a "person". When article 276(2) refers to any "one person", the phrase is referable to any unit which (or who) carries on the profession, trade, calling or employment and it is this unit that is referred to as the "person" under article 276(2).

35. The learned Government Pleader contended that a firm has no juristic existence and the firm name is permitted to be used to indicate the combination of persons for the sake of convenience; the word "person" referred to in article 276(2) is a "juristic person" and not an entity recognized for certain purposes only, as in the Income Tax Act or Sales Tax Act; the business of the firm is the business of each individual partner and each of them is deemed to be carrying on the business to make profits and, therefore, the unit of taxation can be the individual partner and that the General Clause Act, 1987, is applicable subject to the context; learned consul for the Revenue further contended that article 276(2) impose a fetter on the State's power to levy tax under entry No. 60 of List II of Schedule VII to the Constitution and, therefore, the scope of the fetter on legislative competence should not be stretched by any process of statutory interpretation.

36. Under entry No. 60 of List II of Schedule VII, the Constitution created the field of legislation to levy "taxes on professions, trade, callings and employments." This being a legislative head, it has to be given the widest scope. It is a well known principle that legislative powers are given the widest amplitude, unless specific limitation are found in the context of the power. Similarly, any fetter imposed on the power to legislate is strictly construed without unduly expanding the rigour of the limitation. Here, the court is concerned with the power to levy tax; article 276(2) restricts this power. It is all the more necessary to restrict this limitation, as the legislative power to impose tax is hedged in by the ceiling imposed under article 276(2). A "firm" as such is not a legal entity; a firm is given the status of an entity for limited purposes by a few statutes, like the Income Tax Act and the Sales Tax Act. But for these statutory recognitions, a firm is not a juristic person at all. In the context of article 276(2) read with entry No. 60 of List II of Schedule VII to the Constitution, any wide meaning given to the word "person" would unduly fetter the State's power to levy the tax and, therefore, we are of the view that such an interpretation should not be applied to expand the limitation on the State's power to levy the tax referred to in article 276(2). The learned Government Pleader is right in his contention that every partner is deemed to be carrying on the firm's business; even if a partner is a sleeping partner, the business carried on by others is equally on behalf of the sleeping partner (vide section 4 of the Partnership Act). Therefore, in reality, and in the absence of a firm being a juristic person, its business is the business of each and every individual partner. The limitation under article 276(2) of the Constitution cannot be imported by computing the total tax collected from all the partners of a firm, as a levy on the firm as a "person".

37. In *Munshi Ram v. Municipal Committee*, the Supreme Court, while considering the provisions of a Punjab Act, held that the definition of "person" under the Punjab General Clauses Act cannot be imported into the Act in question which levied the profession tax; therefore, the Supreme Court held that each of the partners who are carrying on a trade in partnership with each other, is severally as well as collectively carrying on the trade. At page 1253, the Supreme Court held (at page 492 of 118 ITR) :

"Each partner is considered an agent of the other. This being the position it is not possible to hold that each of the six partners is not carrying on a trade or calling within the purview of clause (b) of section 61(1) of the Municipal Act. At the most, it can be said that each of these six persons is severally as well as collectively carrying on a trade in the municipality. Therefore is nothing in the language of section 61 or the scheme of the Municipal Act which warrants the construction that persons who are carrying on a trade in association or partnership with each other cannot be individually taxed under clause (b) of section 61(1). On the contrary, definite indication is available in the language and the scheme of this statute that such partners can be taxed as persons in their individual capacity. As noticed already, clause (b) makes it clear in no uncertain

terms that this is a tax on "persons". Its incidence falls on individuals, who belong to a class practicing any profession or art or carrying on a trade or calling in the municipality. To hold that persons who are collectively carrying on a trade in the municipality cannot be taxed individually, would be to read into the statute words which are not there."

38. An extension of the above principle, if applied to article 276(2), would prima facie lead to the conclusion that the "person" referred to therein has to be a "legal person", as a normally understood and not a firm.

39. In a view of our conclusion on the first question it is not necessary to examine the contention based on article 304(b) of the Constitution.

40. For the reasons stated above, the amendment brought about by substituting entry No. 20 by the Karnataka Act 15 of 1989, is declared as unconstitutional, being violative of article 14 of the Constitution of India.

41. Consequently, we make the following order :

(1) It is declared that entry No. 20 in Schedule to the Karnataka Act 35 of 1976, as introduced by the Karnataka Act 15 of 1989, violated article 14 of the Constitution and hence is invalid and unenforceable.

(2) Respondents are restrained from enforcing the said provision.

(3) The tax collected, if any, from the petitioner under the said invalid provision be refunded to the respective petitioners unless the same can be adjusted towards any other liability of the petitioners under the Act.

42. Writ petitions are, accordingly, allowed.

43. Rule made absolute. No costs.