

(2003) 08 KAR CK 0014

In the Karnataka High Court

Case No : Writ Appeal No. 7469 of 1999 (T-IT) 12 August 2003

Karnataka Bank Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Interest Tax Act, 1974 — Section 2 (5A)

Citation : (2004) 3 KCCR 321 SN : (2003) 132 TAXMAN 607

Hon'ble Judges : P. Vishwanatha Shetty, J;H.G. Ramesh, J

Bench : Full Bench

Advocate : G. Sarangan and S. Parthasarathi, for the Assessee Arvind Kumar, for the Revenue, for the Appellant;

Judgement

Vishwanatha Shetty, J.

The appellant in this appeal is a Banking Company governed by the Banking Regulation Act, 1949 and registered under the Companies Act, 1913. The appellant assailed the Constitutional validity of the provisions of the Interest Tax Act, 1974 (hereinafter referred to as "the Act") in Writ Petition No. 5926 of 1997. The learned single judge by means of his order dated 18-6-1999 dismissed the writ petition. Aggrieved by the said order this appeal is presented.

2. Challenging the constitutional validity of the Interest Tax Act, Sri G. Sarangan, learned senior counsel appearing alongwith Sri S. Parthasarathi urged four contentions. Firstly, he submitted that the impugned Act has to be struck down as being beyond legislative competence of the Parliament. Elaborating this submission, the learned counsel pointed out that the legislative competence for the impugned Act has to be necessarily referable to article 366(29), Entry 82 of List-I of Schedule-VII of the Constitution, i.e., "Tax on Income"; since the impugned Act does not provide for deduction of basic expenditure or outgoing like interest payable by bank to its depositors, and also deduction of administrative expenses incurred by the bank for carrying out its activities and

makes the levy of interest tax on total gross receipts, it ceases to be a tax on income and as such is unsustainable in law on the ground of lack of legislative competence. In other words, it is his submission that by seeking to include what cannot form part of the interest and levying the tax thereon, i.e., the discounts and commitment charges, the concept of interest is expanded to include what is not "income". It is also his submission that the Interest Act, structurally, functionally and in the mode of ascertainment, forms part of income and therefore it cannot be traced to Entry 97 of List-I of Schedule-VII. In support of his submission, Sri Sarangan referred to us the observations made in Kanga & Phalkiwala Volume-1, VIII Edition, page 455 footnote-8 and also the decisions of the Hon'ble Supreme Court in the case of Commissioner of Wealth-tax, Gujarat Vs. S.C. Kothari, and in the case of AIR 1930 29 (Privy Council) .

3. Secondly, by way of an alternative submission to the first submission, he submitted that since the legislative competence of the Interest tax could be traced to Entry 82 of List-I of Schedule-VII which provides for levy of tax on income; and once the power of legislature is exercised by providing levy of tax on income under Income Tax Act, it is not permissible again to charge the same incident of tax by another tax by giving a different nomenclature when the power of the second tax is traceable to the same entry. According to the learned counsel, this levy has to be struck down on the ground that it is hit by principles of double taxation and it is a colourable piece of legislation.

4. Thirdly, he submitted that the Act is liable to be struck down on the ground that it is highly arbitrary, unreasonable and violative of rights guaranteed to the appellant under article 14 of the Constitution of India. Attack based on article 14 is highlighted on two premises. Firstly, on the ground that the levy per se is unreasonable and arbitrary as the said levy singles out credit institutions defined u/s 2(5A) of the Act and they are picked up for hostile discrimination while other persons who are similarly situated like the appellant who are also in receipt of interest are not subjected to interest tax; and secondly, on the ground that the discrimination in the impugned Act is writ large inasmuch as all credit institutions which are not similarly and identically situated are treated alike and tax is sought to be levied on them uniformly. Elaborating this submission, the learned counsel pointed out that all the credit institutions defined u/s 2(5A) of the Act are not similarly situated and there are big financial institutions like State Bank of India where large deposits are accounted for by the Current Account deposits where no interest is payable; and there are smaller financial institutions like the Appellant whose bulk of the deposits fall under the term deposits where the bank has to pay higher rate of interest. Therefore, he submits that grouping together of dissimilarly situated banking institutions for the purpose of levy of tax under the Act results in violation of the right guaranteed to the appellant under article 14 of the Constitution of India. In support of this submission the learned counsel referred to us the decisions of the Hon'ble Supreme Court in the cases of Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai and Others, and Murthy Match Works and Others Vs. The Asstt. Collector of Central

Excise, and Another, .

5. Lastly, he submitted that the learned single judge, in the impugned order, has not properly appreciated the purport of submission made on behalf of the Appellant under article 270 of the Constitution of India. It is his submission that it is the case of the Appellant that in case the Interest Tax falls within Entry 82 of List-I of Schedule-VII, the fact that the Interest Tax is not being shared by the Union and the State in the manner laid down under article 270 of the Constitution of India renders the Act void as a colourable piece of legislation intended to defeat article 270 of the Constitution. According to him, article 270 of the Constitution enjoins that the tax collected on income are liable to be distributed between the Union and the States; and non-distribution of interest tax between the Union and the States under the Act results in violation of the mandate of the provisions contained under article 270 of the Constitution.

6. However, Sri Arvind Kumar, learned counsel for the respondent strongly resisted each one of the contentions urged by the learned counsel for the Appellant. He pointed out that the assumption made by the Appellant that the impugned tax is tax on income and therefore, the legislative competence could be traced only to Entry 82 of List-I of Schedule-VII is totally misconceived and the said submission overlooks the power conferred on the Parliament to make legislation on any subject which is not covered under Entries I to 96 of List-I of Schedule-VII and also the matters not enumerated in Lists II and III. including any other tax mentioned in either of the lists. According to him, the Act in question has been passed by the Parliament, in exercise of the residuary power conferred on it under Entry 97 of List-I of Schedule-VII. It is his submission that interest Act provides for levy of Tax not as a Tax on income, but as tax on the interest earned. He also submitted that there is also no substance in the submission of the counsel for the Appellant that the provisions of the Act are liable to be struck down on the ground that they are discriminatory, arbitrary in nature and violative of rights guaranteed to the appellant under article 14 of the Constitution of India. It is his submission that all the credit institutions are made liable for payment of tax under the Act. He points out that the appellant having failed to place any material to show that the provisions in question are either arbitrary, unreasonable or discriminatory in nature, and since section 26C of the Act provides for the assessee, viz., the credit institutions, to pass on the interest tax payable by it to the borrowers of the term loan; the payment of interest tax has been allowed to be deducted under allowable deductions u/s 18 of the Act, the appellant cannot make a grievance on the ground that the tax results in discrimination. He also submitted that the contention of Sri Sarangan that levy of interest tax is in the nature of a double taxation is misconceived and even otherwise it is his submission that double taxation is not alien to the fiscal statutes. In support of his submission the learned counsel relied upon the decisions of the Hon'ble Supreme Court in the case of Jain Bros. and Others Vs. The Union of India (UOI) and Others, , in the case of MR. KAMTA PRASAD AGGARWAL ETC. Vs. EXECUTIVE OFFICER, BALLABGARH and Another, , in the

case of N. Takin Roy Rymbai (supra), in the case of Murthy Match Works (supra), in the case of Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., , in the case of Avinder Singh and Others Vs. State of Punjab and Others, , in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others, and in the case of Federation of Hotel & Restaurant v. Union of India AIR 1990 SC 163.

7. In the light of rival submissions made by the learned counsel appearing of the parties, the only question that would arise for our consideration in this appeal is as to whether the impugned Act is liable to be declared as unconstitutional on the grounds urged by the counsel for the Appellant ?

8. Before we proceed to consider the contentions urged, it is useful to refer to the salient features of the impugned Act. The Act was enacted as Act No. 45 of 1974 by the Union of India and the Act originally envisaged the imposition of special tax on the amounts of interest received by the Scheduled Banks on loans and advances made. The Act introduced with effect from 1-8-1974 was in force up to 28-2-1978, when it was withdrawn; and again it was reintroduced with effect from 1-7-1980 and continued to be in force up to 31-1-1985, till it was again withdrawn. Thereafter, the Act was reintroduced again as per Finance (No. 2) Act, 1991 with effect from 1-10-1991. Section 2(5A) of the Act defines "Credit Institutions". The said section reads as follows :

"(SA) "credit institution" means,

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a public financial institution as defined in section 4A of the Companies Act, 1956 (1 of 1956);

(iii) a State Financial Corporation established u/s 3 or section 3A or an institution notified u/s 46 of the State Financial Corporations Act, 1951 (63 of 1951); and

(iv) any other financial company."

Section 4 is the charging section. Section 5 defines the scope of chargeable interest. Section 6 thereof deals with the computation of chargeable interest. Section 7 deals with return of chargeable interest and section 8 provides for assessment in respect of interest escaping assessment. u/s 11, the interest tax is made payable in advance. Sections 12 and 13 deal with penalty for failure to comply with the provisions of the Act. Section 18 of the Act provides for deduction of interest payable under the Act from the profits and gains of the credit institutions for the assessment year. The said section reads as follows :

"Interest Tax deductible in computing total income under Income Tax Act Notwithstanding anything contained in the Income Tax Act, in computing the income of a credit institution chargeable to Income Tax under the head Profits

and gains of business or profession or, under the head "Income from other sources", the interest-tax payable by the credit institution for any assessment year shall be deductible from the income, under the respective heads, of the credit institution assessable for that assessment year."

Section 26C provides for passing on of the interest tax by the credit institutions to the borrowers insofar as term loans are concerned. The said section reads as follows :

"Power of credit institutions to vary certain agreements. Notwithstanding anything contained in any agreement under which any term loan has been sanctioned by the credit institution before the 1-10-1991, it shall be lawful for the credit institution to vary the agreement so as to increase the rate of interest stipulated therein to the extent to which such institution is liable to pay the interest-tax under this Act in relation to the amount of interest on the term loan which is due to the credit institution."

9. Now, we proceed to examine each one of the contentions urged by the counsel for the Parties. At the very outset we may point out that we are unable to accede to the first contention urged by Sri Sarangan that the Interest Tax is a tax on income and therefore it is referable only to Entry 82 of List-I of Schedule VII, i.e., article 366(29) of the Constitution of India and therefore, the tax made leviable without providing for deductions towards the interest payable by the financial institutions to its depositors and also providing for deduction of expenditure incurred and making the tax leviable on gross income received, is beyond the legislative competence. Article 366 of the Constitution defines or provides for the meaning of several matters from items 1 to 30 referred to in the said provision. Clause (29) of article 366 of the Constitution states "tax on income" includes a tax in the nature of an excess profits tax. Entry 82 of List-I of Schedule-VII of the Constitution empowers the Parliament to enact a law to collect taxes on income other than agricultural income. In exercise of the said power, Income Tax Act has been passed by the Parliament. In our view, the impugned Act is legislation made by the Parliament in exercise of the residuary power conferred on it under Entry 97 of List-I of Schedule-VII. Entry 97 of List-I of Schedule-VII of the Constitution empowers the Parliament to make any legislation on "any other matter" not enumerated in List-II or List-III including "any tax" not mentioned in either of those lists. Therefore, wide power and discretion is conferred on the Parliament to make legislation on matters or subjects which are not covered under Entries I to 96 of List-I of Schedule-VII or any other matter not enumerated in List-II or List-III including any tax not mentioned in either of those Lists. It is well settled that the courts, while considering the legislative competence of either the State or the Central Legislature, has to give a very wide and liberal construction to the entries in the three Lists. An Interest Tax is a tax levied on the gross receipt of the interest by the credit institutions. To put it differently, the Interest Tax is levied on gross collection or receipt of interest by a Credit Institution and not on the income or profit earned by it. Therefore, there

cannot be any doubt that the incidence of tax under the impugned Act is different and distinct from the incidence of tax under the Income Tax Act. Therefore, while legislative competence of the Parliament to pass Income Tax Act is traceable to Entry 82 List-I, the power of Parliament to legislate Interest Tax Act, could, unhesitatingly be traced to Entry 97 of List-I. The provision made u/s 18 of the impugned Act that while computing the "Profits and gains of business or profession" or, under the head "Income from other sources", the interest-tax payable by the credit institution for any assessment year shall be deductible from the income, under the respective heads, of the credit institution assessable for the assessment year; and also the provision made u/s 26C of the Act to pass on the interest-tax paid by the credit institution to its customers notwithstanding the agreement made fixing the rate of interest, supports the above conclusion of ours that the interest-tax levied under the Act is different from the Income Tax levied under the Income Tax Act. The Hon'ble Supreme Court in the case of *Second GTO v. D.H. Hazareth* AIR 1970 SC 999 has taken the view that the gift-tax enacted is traceable to Entry 97 of List-I of Schedule-VII. In the said case at paragraphs 4 and 5 it is observed as follows :

"4.... Then there is the declaration in article 248 of the residuary powers of legislation. Parliament has exclusive power to make any law in respect to any matter not enumerated in the Concurrent List or State List and this power includes the power of making any law imposing a tax not mentioned in either of those lists. For this purpose, and to avoid any doubts, an entry has also been included in the Union List to the following effect :

"97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists."

5. It will, therefore, be seen that the sovereignty of Parliament and the Legislatures is a sovereignty of enumerated entries, but within the ambit of an entry, the exercise of power is as plenary as any legislature can possess, subject, of course, to the limitations arising from the Fundamental Rights. The entries themselves do not follow any logical classification or dichotomy. As was said in *State of Rajasthan v. S. Chawla* 1959 Supp. 1 SCR 904 the entries in the lists must be regarded as enumeration simplex of broad categories. Since they are likely to overlap occasionally, it is usual to examine the pith and substance of legislation with a view to determining to which entry they can be substantially related, a slight connection with another entry in another list notwithstanding. Therefore, to find out whether a piece of legislation falls within any entry, its true nature and character must be in respect to that particular entry. The entries must of course receive a large and liberal interpretation because the few words of the entry are intended to confer vast and plenary powers. If, however, no entry in any of the three lists covers it, then it must be regarded as a matter not enumerated in any of the three lists. Then it belongs exclusively to Parliament under entry 97 of the Union List as a topic of legislation." (p. 1000)

10. In the case of *Union of India v. Harbhajan Singh Dhillon*, (1972) 83 ITR 582

(SC) the Honble Supreme Court has taken the view that the scheme of the Constitution and the actual terms of the relevant Articles, viz., article 246, article 248 and Entry 97 of List-I show that any matter, including tax which has not been allotted exclusively to the State legislatures under list II or concurrently with Parliament under List-III falls within List-I including Entry 97 of that list read with article 248. In this connection it is useful to refer to the observations made at paragraphs 19 and 20 of the judgment which reads as hereunder :

"19. It may be that it was thought that a tax on capital value of agricultural land was included in entry 49, List-II. This contention will be examined a little later. But if on a proper interpretation on entry 49, List-II, read in the light of entry 86, List-I, it is held that tax on the capital value of agricultural land is not included within entry 49, List-II or that the tax imposed by the impugned statute does not fall either in entry 49, List-II or entry 86, List I. It would be arbitrary to say that it does not fall within entry 97, List-I. We find it impossible to limit the width of article 248 and entry 97, List I by the words exclusive of agricultural land in Entry 86, List I. We do not read the words any other matter in entry 97 to mean that it has any reference to topics excluded in entries 1-96, List I. It is quite clear that the words "any other matter" have reference to matters on which the Parliament has been given powers to legislate by the enumerated entries 1-96, List I and not to matters on which it has not been given power to legislate. The matter in entry 86, List-I is the whole entry and not the entry without the words exclusive of agricultural land". The matter in entry 86, List-I again is not tax on capital value of assets but the whole entry....

20. It seems to us that the function of article 246(1) read with entries 1-96, List-I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly we do not interpret the words "any other matter" occurring in Entry 97, List-I to mean a topic mentioned by way of exclusion. These words really refer to the matters contained in each of the entries 1 to 96. The words any other matter has to be used because entry 97, List I follows entries 1-96, List I. It is true that the field of legislation is demarcated by entries 1-96, List I, but demarcation does not mean that if entry 97 List I confers additional powers, we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of entry 97, List-I is removed by the wide terms of article 248. It is framed in the widest possible terms. On its terms the only question to be asked is : Is the matter sought to be legislated included in List II or in List III or is the tax sought to be levied mentioned in List II or in List III : No question has to be asked about List I. If the answer is in negative then it follows that Parliament has power to make laws with respect to that matter or tax." (Emphasis here utilized in print supplied) (p. 1069)

From the observation made by the Hon"ble Supreme Court in the cases of D.H. Hazareth (supra) and Harbhajan Singh Dhillon (supra), it is clear that the

Parliament has the legislative competence to make a legislation in respect of the subjects which could be traced to any one of the Entries 1 to 96 and also Entry 97 of List-I. Therefore, there cannot be any doubt that the Parliament has necessary legislative competence to pass the impugned act in exercise of the power conferred on it under Entry 97 of List-I of Schedule-VII.

11. We are also unable to accede to the submission of Sri Sarangan that the impugned Act is liable to be struck down on the ground that the impugned Act provides for levy of interest on total receipts which cannot be considered as income" or "profit" of a banking company as the Act does not provide for deduction of basic expenditure or outgoing like interest payable by the bank to its depositors. In our view, the contents of submission made, even if it is assumed to be correct, cannot be a ground to strike down the impugned Act so long as the Act has been passed by the Parliament in exercise of the power conferred on it under Entry 97 of List I of Schedule-VII of the Constitution. Further, it is also necessary to point out, section 26C of the Act enables for the assessee, namely credit institutions, to pass on the interest tax payable by it to the borrower of the term loan notwithstanding anything contained in the agreement under which any term loan has been sanctioned by the credit institutions. Section 18 of the Act also empowers the credit institutions notwithstanding anything contained in the Income Tax Act in computing the income of such of credit institution chargeable to Income Tax under the head of "Profits and gains of business or profession" or, under the head "Income from other sources", the interest-tax payable by the credit institution for any assessment year, to deduct the interest-tax paid from the income under respective heads. The Division Bench of this Court, in the case of *Devakala Consultancy Services v. Union of India* AIR 1999 Kar 319, has taken the view that the credit institutions are entitled to pass on the tax burden to the borrower. It is useful to refer to the observation made at paragraphs 5 and 6 of the said Judgment, which reads as hereunder :

"5. The interest tax was enacted to impose a special tax on the total amount of interest received by the scheduled banks on loans and advances made in the country. Section 4 of the said Act provided that subject to the provisions of the Act, there shall be charged on every scheduled bank for every assessment year commencing on or after the 1-4-1975, a tax known as interest tax in respect of its chargeable interest of the previous year at the rate of 3 per cent of such chargeable interest. It is not disputed that the aforesaid provision was made effective in operation from 1-10-1991. u/s 5 of the said Act the chargeable interest of any previous year of a scheduled bank is deemed to be the total amount of interest accruing or arising to the bank in that previous year. It follows, therefore, that the tax sought to be imposed by the said Act was a tax on the banks and not upon the borrowers. Under the said act the banks were obliged to pay the tax on the interests in terms of and to be extend provided under sections 4 and 5.

6. Section 26C was inserted later authorising the banks to vary the agreements executed between the credit institutions and the borrowers so as to increase the rate of interest stipulated therein to the extent to which such institution was liable to pay the interest tax under the Act in relation to the amount of interest on the term loan which was due to the credit institution. Respondents 3 to 29 are admittedly the credit institutions and authorised to vary the terms of the agreement, so as to increase the rate of interest to the extent the same is payable by such credit institutions...." (p. 321)

12. In the case of Kamta Prasad Aggarwal (supra) the Hon"ble Supreme Court while considering the question whether the tax on profession amounts to tax on income has taken the view that the tax on profession is not necessarily connected with the income. It is useful to refer to the observation made by the Hon"ble Supreme Court at paragraph 9 of the said Judgment which reads as follows :

"9. The contention of the appellants that the imposition of tax by the Panchayat Samiti amounts to double taxation and is, therefore, illegal is unsound. A tax on profession is not necessarily connected with income. This is clear from the tax on professions imposed by several municipal authorities at certain rates mentioned in the relevant statutes. A tax on income can be imposed if there is income. A tax on profession can be imposed if a person carries on a profession. Such a tax on profession is irrespective of the question of income."

13. It is also necessary to point out that even if it is held that the impugned Act amounts to levying tax on income and it is traceable to Entry 82 of List-I of Schedule-VII, still we are of the view that the said Act is not liable to be struck down as unconstitutional on the ground urged by the learned counsel appearing for the Appellant. In fact, the learned single judge has taken the view that the income received by the credit institutions in respect of loans and advances is also an income. Therefore, the words "tax on income" as observed by the learned Single Judge, is wide enough to include several types of income including the tax on interest income of the financial institutions; and could have been special provision for levy of additional tax, surcharge on particular type of income in itself, or the Parliament could legislate by way of separate enactment as has been done in the instant case. The Honble Supreme Court in the case of Jain Bros. (supra) has taken the view that double taxation is not alien to fiscal statute. In this connection, it is useful to refer to the observation made by the Hon"ble Supreme Court at paragraph 6 of the Judgment which reads as hereunder :

"6. It is not disputed that there can be double taxation if the legislature has distinctly enacted it. It is only when there are general words of taxation and they have to be interpreted they cannot be so interpreted as to tax the subject twice over to the same tax (vide Channell, J., in *Stevens v. Durban-Rudderpost Gold Mining Co. Ltd.* STC 402. The Constitution does not contain any prohibition against double taxation even if it be assumed that such a taxation is involved in

the case of firm and its partners after the amendment of section 23(5) by the Act of 1956. Nor is there any other enactment which interdicts such taxation. It is true that section 3 is the general charging section. Even if section 23(5) provides for machinery for collection and recovery of the tax, once the legislature has, in clear terms, indicated that the income of the firm can be taxed in accordance with the Finance Act of 1956 as also the income in the hands of the partners, the distinction between a charging and a machinery section is of no consequence. Both the sections have to be read together and construed harmoniously. It is significant that similar provisions have also been enacted in the Act of 1961. Sections 182 and 183 correspond substantially to section 23(5) except that the old section did not have a provision similar to sub-section (4) of section 182. After 1956, therefore, so far as registered firms are concerned the tax payable by the firm itself has to be assessed and the share of each partner in the income of the firm has to be included in his total income and assessed to tax accordingly. If any double taxation is involved the legislature itself has, in express words, sanctioned it. It is not open to any one thereafter to invoke the general principles that the subject cannot be taxed twice over." (Emphasis here italicised in print supplied) (p. 315)

14. Further, in the case of Avinder Singh (supra), the Hon"ble Supreme Court while repelling the contention that double taxation is not permissible, at paragraph 4 of the judgment has observed as follows :

".... A feeble plea that the tax is bad because of the vice of double taxation and is unreasonable because there are heavy prior levies was also voiced. Some of these contentions hardly merit consideration, but have been mentioned out of courtesy to counsel. The last one, for instance, deserves the least attention. There is nothing in article 265 of the Constitution from which one can spin out the constitutional vice called double taxation. (Bad economics may be good law and vice versa). Dealing with a somewhat similar argument, the Bombay High Court gave short shift to it in Western India Theatres. Some undeserving contentions die hard, rather survive after death. The only epitaph we may inscribe is : Rest in peace and don't be re-born. If on the same subject-matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist." (p. 144)

15. Further, in the case of Public Services Tribunal Bar Association Vs. State of U.P. and Another, the Hon"ble Supreme Court while laying down the guidelines to nullify the legislation on the ground of constitutional infirmities, at paragraphs 27 and 28 has observed as follows :

"27.... In the present appeals legislative action of State is under challenge. Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances it is imperative upon the courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it

is the duty of the constitutional courts under or Constitution to declare a law enacted by Parliament or the State legislature as unconstitutional when Parliament or the State legislature has assumed to enact a law which is void, either from want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution.

28. In *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc.,* , this court indicated the approach which the court should adopt while examining the validity/constitutionality of a legislation. It would be useful to remind ourselves of the principles laid down which read : (SCC p. 466, para 17)

"The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application."

In the same para the court further observed as follows :

"The court must recognise the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognise and gives effect to the concept of equality between the three wings of the State and the concept of "checks and balances" inherent in such scheme." (Emphasis here italicised in print supplied) (p. 121)

16. Therefore, in the light of the discussion made above, it is not possible to take the view that the impugned Act is liable to be struck down either on the round it amounts to double taxation or on other grounds urged by Sri Sarangan.

17. The third contention advanced by Sri Sarangan that the impugned Act is liable to be struck down on the ground it is violative of the right guaranteed to the appellant under article 14 of the Constitution of India, in our view, is devoid of any substance. It is not possible to accept the submission of the learned counsel that the appellant and other financial institutions which are similarly situated like the appellant are picked up for hostile discrimination while other persons who are similarly situated like the appellant and who are also in receipt of interest are not subjected to any interest tax. The contention of the learned counsel that persons who are dissimilarly situated are grouped together, to our mind, in the facts and

circumstances of the case, does not merit any consideration, as it is devoid of any substance. The appellant has failed to substantiate its contention by placing any material in support of its plea. There is a presumption in favour of the constitutionality of the legislation. The burden is on the person who challenges the constitutional validity to establish the constitutional invalidity by placing necessary materials on that behalf. As noticed by us earlier, the appellant has not placed any foundation or basis for such a contention. Under these circumstances, in our view, the classification of financial institutions defined u/s 2(5A) of the Act and others is a reasonable classification and has a direct nexus with the object sought to be achieved. It is necessary to point out that while the fiscal statute is also amenable to the requirement of article 14 of the Constitution, the legislature has a wide discretion in the matter of selection of the persons to be taxed, the nature and the quantum of tax to be imposed. The legislation concerning economic and fiscal matters are made from time to time depending upon the need of such legislation; the fiscal or economic necessities varies from time to time and it is open to the legislature to examine the source from which such necessities could be fulfilled; in a taxing statute like this, the wisdom of Parliament to a large extent is outside the purview of a judicial review; in exercise of its governmental power, the State, as of necessity, required to make laws operating differently in relation to different groups or class of persons to attain certain ends and therefore, must possess the authority and power to distinguish and classify persons or things. In a matter like this, it is well-settled, that no precise set formulae or doctrinaire tests or precise scientific principles of either inclusion or exclusion can be applied; therefore, the courts should be very slow and restrained in nullifying the fiscal statutes on the ground it is violative of article 14 of the Constitution. In this connection, it is useful to refer to the observation made by the Hon''ble Supreme Court in the case of Hiralal Rattan/al (supra) at paragraphs 17, 19 and 20 of the Judgment, which reads as follows :

"17.... It is true that the taxing statutes are not outside the scope of article 14 of the Constitution. But the legislature has wide powers of classification in the case of taxing statutes.

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19. In Khandige Sham Bhat v. Agricultural Income Tax Officer AIR 1963 SC 591, this court laid down the tests to find out whether there are discriminatory provisions in a taxing statute. Therein this court observed that in order to judge whether a law was discriminatory what had primarily to be looked into was not its phraseology but its real effect. If there was equality and uniformity within each group, the law could not be discriminatory, though due to fortuitous circumstances in a peculiar situation some included in a class might get some advantage over others, so long as they were not sought out for special treatment. Although taxation laws could be no exception to this rule, the Courts would, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of

classification so long as there was no transgression of the fundamental principles underlying the doctrine of classification. The power of the legislature to classify must necessarily be wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways.

20. It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for public good. Which persons should be taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a democratic set up it is for the legislature to decide what economic or social policy it should pursue or what administrative considerations it should bear in mind...." (Emphasis here italicised in print supplied) (p. 223)

18. Further, in the case of *PM. Ashwathanarayana v. State* (1989) Suppl. 1 SCC 696, the Honble Supreme Court has observed that while the legislative measures dealing with economic measures are not outside the scope of article 14, the State enjoys a wide latitude in the matters of economic regulations are concerned. It is useful to refer to the observation made by the Honble Supreme Court in the course of the Judgment, which reads as hereunder :

"The problem is indeed, a complex one not free from its own peculiar difficulties. Though other legislative measures dealing with economic regulation are not outside article 14, it is well-recognized that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the manner of its preferences of economic and social policies and effectuate and chose system in all possible and reasonable ways. if two or more methods of adjustments of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims, The legislature possesses the greatest freedom in such areas...." (Emphasis here italicised in print supplied)

19. Again, in the case of *Venkateshwara Theatre Vs. State of Andhra Pradesh and Others*, the Hon'ble Supreme Court has observed that in the field of taxation, the decisions of the Honble Supreme Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes so long as it refrains from clear and hostile discrimination against particular persons or classes. It is well settled that mere fact that a tax falls more heavily on some in the same category, it is not by itself a ground to declare the law invalid. In this connection, it is useful to refer to the observation made by the Hon'ble Supreme Court in the case of *N. Tatin Roy Rymbai* (supra). In the said decision at

paragraph 27 the Hon"ble Supreme Court has observed as follows :

"While it is true that a taxation law cannot claim immunity from the equality clause in article 14 of the Constitution, and has to pass, like any other law, the equality test of that article, it must be remembered that the State has, in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerable wide discretion in the matter of classification for taxation purposes. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax, and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. Nor the mere fact that a tax falls more heavily on some in the same category, it by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of article 14." (Emphasis here italicised in print supplied) (p. 88)

20. In the case of Federation of Hotel & Restaurant (supra), while examining the constitutional validity of the Expenditure Tax, 1987, reiterating the law laid down by the Supreme Court in its earlier decisions, has held that the legislature enjoys wide discretion in the matter of selection of persons, subject matter, events, etc., for taxation and the tests of vice of discrimination in a taxing law are less rigorous. It is useful to refer to the observation made at paragraph 20 of the Judgment, which reads as hereunder :

"It is now well settled that though taxing laws are not outside article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal-policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc., for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this court on the matter have permitted the Legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.

But, with all this latitude certain irreducible desiderata of equality shall govern classifications for differential treatment in taxation laws as well.

The classification must be rational and based on some qualities and characteristics which are to be found in all the persons grouped together and absent in the others left out of the class. But this alone is not sufficient.

Differential must have a rational nexus with the object sought to be achieved by the law. The State, in the exercise of its governmental power, has, of necessity, to make laws operating differently in relation to different groups or class of persons to attain certain ends and must, therefore, possess the power to distinguish and classify persons or things. It is also recognised that no precise of set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of the palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience." (Emphasis here italicised in print supplied) (p. 1652)

21. From the law laid down by the Hon"ble Supreme Court in the decisions referred to by us above, it is clear that the test could only be one of the palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience; the burden is on the person to establish the invalidity of the legislation. Therefore, in the light of the tests referred to above, if the validity of the impugned legislation is examined, we have no hesitation to hold that the impugned Act cannot be nullified by this court on the ground that the provisions of the Act contravenes the right guaranteed to the appellant under article 14 of the Constitution of India. Therefore, the third submission of Sri Sarangan is also liable to be rejected.

22. The only question, now, remains to be considered is : whether the impugned Act is liable to be declared as unconstitutional on the ground that the interest tax is not being shared between the Union and the State in the manner laid down by article 270 of the Constitution? As rightly pointed out by the learned Single Judge, the appellant has failed to establish that the tax collected by virtue of the impugned Act is not being shared between the Union and the State. As noticed by us earlier, when the appellant calls in question the constitutional validity of the Statute on the ground it runs counter to the provisions of the Constitution, the burden is on it to establish the same. The appellant has failed to discharge the said burden. In our view, the sharing of the proceeds collected by virtue of the impugned Act is a matter between the Union and the State and the non-sharing of proceeds collected by the Union and the State, in our view, cannot be a ground to nullify the provisions of the Act. It could be a ground for the State to make claim for its share and enforce its rights. It will not be a ground, as noticed by us earlier, to nullify the impugned Act. Therefore, the fourth and the last contention advanced by the learned counsel for the Appellant is also liable to be rejected as one devoid of any substance.

23. Therefore, in the light of the discussion made above, this appeal is liable to be rejected. Accordingly it is rejected. However, no order is made as to costs.