
(1986) 06 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 1462 of 1979

K.V. Abdulla

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 06-06-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Finance Act, 1976 — Section 2

Citation : (1986) 161 ITR 589 : (1986) 28 TAXMAN 87

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

Bench : Division Bench

Advocate : G. Sarangan and J.N.S. Prasad, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Mahendra, J.—In this petition under article 226 of the Constitution of India, the petitioner has prayed for the issue of a writ of certiorari quashing exhibit B, the order of assessment made by the Income Tax Officer, Central Circle V, Bangalore, dated August 26, 1978, issue of a writ of prohibition restraining respondent No. 1 from taking any steps pursuant to exhibit B and also to declare the provision relating aggregation of agricultural income for rate purposes unconstitutional as offending articles 14 and 19 of the Constitution.

2. The facts leading to this petition are these :

The petitioner is an assessee under the Income Tax Act, 1961. He has his year of accounting ending on 31st of March every year. For the assessment year 1976-77, the Finance Act, 1976 ("the Finance Act"), was applicable to the petitioner and he filed his return declaring his income from his business, property, as also income from agriculture. He, however, sent a representation, exhibit A, on August 14, 1978, to respondent No. 1 requesting him not to take into consideration, for the purpose of assessment, his agricultural income. Respondent No. 1 did not agree with his request and completed the assessment by his order, exhibit B, taking into consideration the agricultural income also as

provided under the Finance Act. Hence, this writ petition for the reliefs noticed earlier.

3. Sri G. Sarangan, learned counsel for the petitioner, made the following submissions for our consideration :

(i) The provisions of the Finance Act providing for aggregating the agricultural income for rate purposes under the Act are beyond the legislative competence of Parliament. Elaborating this submission, Sri Sarangan argued that the tax can only be levied under the Act on the total income other than "agricultural income" and Parliament by section 2 of the Finance Act is really levying tax on agricultural income of the assessee and as the agricultural income can only be taxed under entry 46 in List II of the Seventh Schedule, by a State, Parliament had no competence to enact a provision in the Finance Act and thus levy tax on agricultural income of an assessee.

(ii) The impugned provision subjects the petitioner and others similarly placed to hostile discrimination and the same offends article 14 of the Constitution of India.

4. Sri K. Srinivasan, learned standing counsel for the Revenue, argued that the Finance Act had only provided for aggregation of "agricultural income" with the other income of an assessee and it is only the "total income" as determined under the Act that was taxed, and not the agricultural income, and the provisions providing for aggregation was within the competence of Parliament under entry 82 in List I of the Seventh Schedule to the Constitution. He also argued that there was no violation of article 14 of the Constitution.

5. Parliament enacted the Finance Act in the year 1976 to give effect to the financial proposals of the Central Government for the financial year 1976-77. Section 2 of the Finance Act, which is relevant for our purpose, reads thus :

"2. (1) Subject to the provisions of sub-sections (2), (3) and (4), for the assessment year commencing on the 1st day of April, 1976, Income Tax shall be charged at the rates specified in Part I of the First Schedule and shall be increased, -

(a) in the cases to which Paragraphs A, B, C and D of that Part apply, by a Surcharge for purposes of the Union; and

(b) in the cases to which Paragraphs E and F of that Part apply, by a surcharge, calculated in each case in the manner provided therein.

(2) In the cases to which Sub-Paragraph I or Sub-Paragraph II of Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income, in addition to total income and the total income exceeds eight thousand rupees, then, -

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) (that is to say, as if the net agricultural income were comprised in the total income after the first eight thousand rupees of the total

income but without being liable to tax), only for the purpose of charging Income Tax in respect of the total income; and

(b) the Income Tax chargeable shall be calculated as follows :-

(i) the total income and the net agricultural income shall be aggregated and the amount of Income Tax shall be determined in respect of the aggregate income at the rates specified in Sub-Paragraph I or, as the case may be, Sub-Paragraph II of the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of eight thousand rupees and the amount of Income Tax shall be determined in respect of the net agricultural income as so increased at the rates specified in Sub-Paragraph I or, as the case may be, Sub-Paragraph II of the said Paragraph A, as if the net agricultural income as so increased were the total income;

(iii) the amount by which Income Tax determined in accordance with sub-clause (i) exceeds the amount of Income Tax determined in accordance with sub-clause (ii) shall be the Income Tax chargeable in respect of the total income."

6. Sub-section (2) of section 2 of the Finance Act provides for the case to which it is made applicable. Where the assessee has in the previous year any net "agricultural income" in addition to "total income" and the "total income" exceeds eight thousand rupees, then the net agricultural income should also be taken into consideration only for the purpose of charging tax on the "total income". The aggregation of the "total income" and the "net agricultural income" is made for the purpose of charging Income Tax only on the net income. The manner of calculating the income chargeable is also provided in clause (b) of sub-section (2) of section 2 of the Finance Act. The assessing authority has aggregated the agricultural income of the petitioner with the net income and levied Income Tax only on the total income as provided under sub-section (2) of section 2 of the Finance Act.

7. The question in this case relates to the correct interpretation of the entries in the Constitution. The two entries in the Constitution that may be relevant for our purpose are entry 82 in List I and entry 46 in List II of the Seventh Schedule to the Constitution. Entry 82 in List I reads; "Taxes on income other than agricultural income". Entry 46 in List II reads : "Taxes on agricultural income".

8. The rule of interpretation in construing the entries in the Seventh Schedule are well settled. The power to legislate is given to the appropriate legislature by articles 245 and 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate legislatures can operate. None of the entries is to be read in a narrow or restricted sense and each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. In construing an entry in a list conferring legislative powers, the widest possible construction, according to their ordinary meaning, must be

put upon the words used therein. In construing words in a constitutional enactment conferring legislative powers, the most liberal construction should be put upon the words so that the same have effect in their widest amplitude - Harakchand Ratanchand Bantia and Others Vs. Union of India (UOI) and Others, and Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, Bearing in mind the principles enunciated by the Supreme Court in the above cases, we will examine the contentions of the parties before us.

9. Section 4 of the Act provides that Income Tax is charged at the rate or rates fixed on every person on the income of the previous year of the assessee. Section 10(1) of the Act provides that the agricultural income shall not be included in computing the "total income" of the previous year of a person. Incomes on which no Income Tax is payable under Chapter VII is also required to be included in computing the total income of an assessee. It was, therefore, argued on behalf of the petitioner that u/s 10(1) agricultural income has to be excluded in computing the total income of an assessee and agricultural income not being income forming part of the "total income" on which no tax is payable under Chapter VII, the provision in the Finance Act which provides for aggregating the agricultural income with the net income of the assessee for purposes of levying tax is without competence.

10. That a State Legislature has the competence to enact a law with respect to entry 46 in List II of the Seventh Schedule providing for levy of tax on agricultural income and Parliament has the competence to enact a law with respect to entry 82 in List I providing for levy of tax on income other than agricultural income is not in dispute. What is in dispute is whether the impugned provisions in the Finance Act are with respect to tax on agricultural income under entry 46 in List II.

11. As already noticed, the language employed in the impugned provisions provide for aggregating the net agricultural income with the "total income" of an assessee and the tax is levied only on the total income of the assessee. The aggregation of the agricultural income is only for the purpose of determining the rate of tax to be levied on the net income. The question, however, is whether it is permissible to take into account the turnover representing the agricultural income also for the purpose of levying tax on the net income.

12. The disability of Parliament because of entry 46 in List II is in the matter of levying tax on agricultural income. The power of Parliament in the matter of levying tax on income other than agricultural income is beyond dispute because of entry 82 in List I. In enacting a law for levying tax under this entry, Parliament must necessarily have all the incidental or ancillary powers, so long as the law so enacted does not transgress the forbidden field. In this case, therefore, notwithstanding the disability referred to above, Parliament may, for the purpose of computing the total income of an assessee, include the agricultural income but such an inclusion for the aforesaid purpose should not affect the non-liability for the Income Tax of the agricultural income of the assessee. Parliament may,

therefore, make a law under entry 82 in List I of the Seventh Schedule providing that for the computation of income of an assessee, his agricultural income also should be taken into account subject, however, that such inclusion would not subject the agricultural income to tax under the Act. To put in other words, so long as the agricultural income is not taxed, there is nothing to prevent Parliament, while making a law for levying Income Tax under entry 82 in List I of the Seventh Schedule to take into account the total income of an assessee and the net agricultural income as has been done by sub-section (2) of section 2 of the Finance Act, 1976. The tax is not levied on the turnover including agricultural income covered by entry 46 in List II of the Seventh Schedule, but is levied only on the income other than agricultural income resulting in higher rate of tax being levied on the assessee who is in a position of "economic superiority". The definition of "gross turnover" in section 2(j) of the Bihar Finance Act, 1981, is adopted not for the purpose of subjecting agricultural income to tax, but only for the purpose of classifying and identifying the assessee who is capable of paying higher rate of income tax, i.e., to classify assessee into two categories, namely, those who have the capacity to pay higher tax and those who have not that capacity and levying higher rate of tax only on those who have the capacity to pay higher tax.

13. In *The Commissioner of Income Tax, Bombay City Vs. The Khatau Makanji Spinning and Weaving Co. Ltd., Bombay*, , additional Income Tax was levied in respect of dividends distributed in excess of the specified limit under clause (ii) of the proviso to Paragraph B of Part I of the First Schedule to the Finance Act, 1951, (as applied to the assessment year 1953-54 by the Finance Act, 1953). u/s 3 of the Income Tax Act, 1922, Income Tax is a tax on the income of the previous year and it would not cover something which is not the income of the previous year or made so fictionally. The Finance Act, 1951, failed in its purpose. The additional tax was not properly laid upon the "total income" because what was actually taxed was never a part of the total income of the previous year. The Finance Act did not lay down that it should be taxed as part of the total income. The Supreme Court, therefore, held that the imposition of additional tax was not valid. The additional Income Tax was sought to be imposed on income which is not of the "previous year". The ratio in this case does not bear on the question and is of no assistance to the petitioner.

14. In *Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon*, , it was argued that certain provisions incorporating amendments to the relevant provisions of the Wealth-tax Act, 1957, having the effect of including the capital value of agricultural lands in computing the net value for the purpose of wealth-tax suffers from legislative competence. The Supreme Court laid down that article 248 being framed in the widest possible 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 and if the answer is in the negative, then it follows that Parliament has power to make laws with respect to that matter of tax. There is no principle of construction by which we can cut

down the wide words of a substantive article like article 248 by the wording of an entry in Schedule VII, namely, entry 86 of List I and hold that the Wealth-tax Act is not a law with respect to entry 49 of List II and does not impose a tax mentioned in entry 49 and, therefore, the legislation is valid either under entry 86 of List I read with entry 97 of List I or entry 97 standing by itself. Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon, is, therefore, an authority for the proposition that only in a matter included in List II or III or the tax is one mentioned in List II or in List III, then Parliament has no competence to legislate on that matter or to levy that tax. Parliament has competence to legislate in all other matters and levy other taxes. Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon, does not in any way help the petitioner.

15. In SUDHIR CHANDRA NAWN Vs. WEALTH-TAX OFFICER, CALCUTTA, AND OTHERS. INTERVENERS : (1) STATE OF ASSAM; (2) STATE OF KERALA; AND (3) STATE OF UTTAR PRADESH., , the Wealth-tax Act, 1957, as it originally stood, was challenged on various grounds. One of the grounds taken was that since the "net wealth" as defined by the Act included non-agricultural lands and buildings and entry 49 in List II reserved the power to impose tax on lands and buildings to the States, the tax suffered from legislative competence. The Supreme Court rejected this contention and held that the tax was imposed under entry 86, List I, that it was not a tax directly on land and buildings as it was on the capital value of the assets of an assessee on the valuation date and on the different components of those assets and, therefore, it was a tax different from the one which could be imposed under entry 49, List II.

16. In Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, , sub-section (1) of section 5 of the Bihar Finance Act, 1981, provided for the levy of surcharge on every dealer whose gross turnover during a year exceeded Rs. 5 lakhs at such rate not exceeding 10 per cent. of the total amount of tax as may be fixed by the State Government by notification, in addition to the tax payable by him and sub-section (3) prohibited such dealer from collecting the amount of surcharge from the purchasers. "Gross turnover" was defined by section 2(j) to include sales of goods made outside the State or in the course of inter-State trade or commerce or export. The contention before the court was that sub-section (1) of section 5 of the Act is ultra vires the State Legislature of Bihar in so far as for the purpose of the levy of surcharge on a certain class of dealers, it takes into account his gross turnover as defined in section 2(j) of the Act. It was argued that the State Legislature was not competent under entry 54 of List II of the Seventh Schedule to enact a provision like sub-section (1) of section 5 of the Act which makes the gross turnover of a dealer as defined in section 2(j) to be on the basis for the levy of a surcharge, i.e., inclusive of transactions relating to sale or purchase of goods which have taken place in the course of inter-State trade or commerce or outside the territory of India. Such transactions are outside the purview of the Act and, therefore, they cannot be taken into consideration for computation of the gross turnover as defined in section 2(j) of the Act for the purpose of bearing the incidence of surcharge. It is impermissible

to take into account for computation of the gross turnover transactions relating to sale or purchase of goods in the course of inter-State trade or commerce or outside the territory of India. The Supreme Court referred with approval the enunciation made in AIR 1941 47 (Federal Court) and affirmed in *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd.* AIR 1947 PC 60, and held that it is within the competence of the State Legislature under article 246(3) to provide for matters which though within the competence of Parliament are necessarily incidental to effective legislation by the Legislature on the subject of legislation expressly enumerated in List II. The Supreme Court further explained its earlier decision in *Fernandez v. State of Kerala* [1957] 8 STC 561, and observed that *Fernandez's* case is an authority for the proposition that the State Legislature, notwithstanding article 286 of the Constitution, while making a law under entry 54 of List II of the Seventh Schedule can, for purposes of the registration of a dealer and submission of returns of sales tax, include the transactions covered by article 286 of the Constitution and held that sub-section (1) of section 5 of the Act which provides for the classification of dealers whose gross turnover during the year exceeds Rs. 5 lakhs for the purpose of levy of surcharge, in addition to the tax payable by him, is not assailable. So long as sales in the course of inter-State trade or commerce or sales outside the State and sales in the course of import into, or export out of, the territory of India, are not taxed, there is nothing to prevent the State Legislature while making a law for the levy of surcharge under entry 54 of List II of the Seventh Schedule to take into account the total turnover of the dealer within the State and provide, as has been done by sub-section (1) of section 5 of the Act, that if the gross turnover of such dealer exceeds Rs. 5 lakhs in a year, he shall, in addition to the tax, also pay a surcharge at such rate not exceeding 10 per centum of the tax as may be provided. The liability to pay surcharge is not on the gross turnover including the transactions covered by article 286 but is only on inside sales and the surcharge is sought to be levied on dealers who are in a position of economic superiority. The definition of "gross turnover" in section 2(j) of the Act is adopted not for the purpose of bringing to surcharge inter-state sales or outside sales or sales in the course of import into, or export of, goods out of the territory of India, but is only for the purpose of classifying dealers within the State and to identify the class of dealers liable to pay such surcharge.

17. In *Controller of Estate Duty Vs. Smt. Andal Thayaramma*, a Full Bench of this court while considering whether the value of shares of the lineal descendants could be aggregated in determining the rates of estate duty payable by the assessee (section 34 of the Estate Duty Act, 1953, provides for aggregation of proportion specified therein and on such aggregation the rate of estate duty to be levied shall be on the whole of such aggregated property) has observed that aggregation for the rate purposes provided in that Act is nothing new or novel and is in the familiar pattern in other taxation measures like the Income Tax Act and levy of estate duty in England.

18. In all these cases, the provisions provide for aggregation only to identify the

economically fat persons for subjecting them to higher rate of tax. But the inclusion or aggregation for the aforesaid purpose will not affect the non-liability to tax of the amount so aggregated. These provisions so providing for aggregation have been held to be within the competence. The provision for aggregation is made in the various tax Acts only for determining the higher rates to be levied on persons of economic superiority, under the relevant taxing Acts. As observed by a Full Bench of this court in answering a question under the Estate Duty Act, 1953, in *Controller of Estate Duty Vs. Smt. Andal Thayaramma*, : "Aggregation for rate purposes provided in the Act is nothing new or novel and is on the familiar pattern in other taxation measures like the Income Tax Act and levy of estate duty in England".

19. *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, is a complete answer to all the contentions raised on behalf of the petitioner. But as the learned counsel referred to the other decisions and argued, we have examined them also.

20. What emerges from the above discussion is that the constitutional validity of the impugned provisions providing for aggregation of the "agricultural income" with the "net income" for taxing only the "net income" under the Act is unassailable. So long as the tax is on the net income and the agricultural income is not subjected to tax, it is always open to Parliament to legislate, while subjecting the "net income" to tax under entry 82 in List I, to take into account the aggregate of the "net income" and the "agricultural income" for the purpose of determining the rate of tax to be levied on the "net income". By the impugned provisions in the Finance Act, Parliament has only provided for such aggregation of net income and agricultural income for taxing only the net income at a higher rate. By the impugned provisions, though the rate of tax depends upon the aggregated amount, namely, the "net income" and the "agricultural income". what is taxed is only the net income and not the agricultural income. As held in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, , this aggregation is provided or is taken into consideration only for the purpose of identifying a class of assesseees of economic superiority who are liable to pay tax at a higher rate only on their "net income". The impugned provisions are, therefore, within the competence of Parliament.

21. Let us next consider the argument based on article 14 of the Constitution. it was argued that these provisions made an arbitrary and irrational classification of assesseees into two groups, namely, those who have agricultural income and those without agricultural income and subject those with agricultural income to heavier taxation. The assesseees with agricultural income are financially in a better position than the assesseees without agricultural income. The impugned provisions select or pick assesseees with agricultural income because of the belief of Parliament that capacity to pay tax increases with the increase in income. The purpose of classifying is to subject the assesseees with agricultural income who are in a position of economic superiority to a higher rate of tax on their "net

income" only. The object of classification of the assesseees is not to tax their agricultural income also but only to identify or classify the assesseees into those who are economically superior and who are not. The higher rate of tax is levied only on those who have the capacity to bear the burden of the higher rate of tax. Making the burden of tax on the net income heavier in proportion to the increase in the agricultural income cannot be said to be unreasonable. The basis is that the big man by reason of his economic superiority to pay should bear a higher load of taxes than is borne by a little man. An assessee with agricultural income occupies a position of economic superiority by reason of his larger income and to make his tax liability heavier is not arbitrary but is only an attempt to proportion the payment to capacity to pay and then arrive in the end at a more genuine equality. Assesseees with agricultural income are in a position of economic superiority and form a class by themselves and it is not the case of the petitioner that the assesseees belonging to this class are not treated alike - K.M. Mohamad Abdul Khader Firm Vs. State of Tamil Nadu and Others, . It, therefore, follows that the argument of arbitrariness is an argument of despair and is devoid of merit.

22. In the result, this writ petition fails and is dismissed with no order as to costs.