(1995) 05 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No. 312 of 1993

Modi Engineering Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Income Tax Act, 1961 — Section 253, 253(6)

Citation : (1996) 218 ITR 50

Hon'ble Judges : A.P. Ravani, C.J;P.K. Palli, J

Bench : Division Bench

Advocate : B.C. Mehta, for the Appellant; D.S. Shishodia, for the Respondent

Judgement

1. The petitioner has challenged the constitutional validity of the amended provision of Section 253(6) of the Income Tax Act, 1961, which has been brought into force by the Finance Act, 1992, with effect from June 1, 1992. The aforesaid provision deals with payment of court fee in respect of the appeal before the Income Tax Appellate Tribunal. The fee prescribed is Rs. 250 in cases where the income assessed is Rs. 1 lakh or less. The cases in which the total income of the assessee computed is more than Rs. 1 lakh and such assessment is challenged by way of appeal, the fee is Rs. 1,500.

2. The petitioner contends that before 1970, when the provision was inserted, the basis for levy of fees for filing appeal was initiation of the proceedings. Now, the basis is changed. It is submitted that the provision is arbitrary and the fee prescribed is excessive.

3. It is open to the Legislature to choose any relevant basis. The only condition is that the criteria or basis adopted should have some nexus with the subject-matter. It cannot be said that the amended provision has no nexus with the subject-matter in relation to which amendment has been made.

4. As far as the contention that the provision is arbitrary is concerned, the same

cannot be accepted. The provision itself indicates the guidelines and the basis on which the fees are to be paid. In matters where the total income assessed is less than Rs. 1 lakh, the fee provided is Rs! 250, while in matters where the total income assessed is more than Rs. 1 lakh, the fee provided is Rs. 1,500. This itself indicates that there is application of mind by the Legislature as regards the basis to be adopted. Again, it may be noted that in fiscal matters particularly with regard to imposition of fees, the alleged arbitrariness should be palpable. That is to say that it should be writ large on the face of it. In this connection, reference may be made to the decision of the Supreme Court in P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, In the aforesaid decision, the constitutional validity of the provision of the Rajasthan Court-fees and Suits Valuation Act and that of the Karnataka Court-fees and Suits Valuation Act as well as that of the Bombay Court-fees Act came up for consideration. The Supreme Court has in paras. 30 and 31, inter alia, observed as follows (headnote) :

"Though legislative measures dealing with economic regulation are not outside Article 14 of the Constitution, it is well recognised 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 matter of its preferences of economic and social policies and effectuate the chosen 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. The analogy of principles of the burden of tax may not also be inapposite in dealing with the validity of the distribution of the burden of a ''fee'' as well. The Legislature has to reckon with practical difficulties of adjustments of conflicting interests. It has to bring to bear a pragmatic approach to the resolution of these conflicts and evolve a fiscal policy it thinks is best suitable to the felt needs. The complexity of economic matters and the pragmatic solutions to be found for them defy and go beyond conceptual mental models. Social and economic problems of a policy do not accord with pre-conceived stereotypes so as to be amenable to pre-determined solutions."

5. In view of the aforesaid settled legal position, it cannot be said that the impugned amended provision is capable of being challenged on the ground of alleged arbitrariness or excessiveness of the fee prescribed.

6. There is no substance in this writ petition. Hence, it is rejected.

