

Balaji

Vs

Income-Tax Officer, Special Investigation Circle, Akola, and Others

Petition No. 240 of 1960

(P. B. Gajendragadkar, M. Hidayatullah, J. C. Shah, K. Subha Rao, Raghuvar Dayal JJ)

04.08.1961

JUDGMENT

SUBBA RAO J. –

This writ petition filed under article 32 of the Constitution raises the question of the constitutional validity of section 16(3)(a)(i) of the Indian Income-tax Act, 1922 (XI of 1922) (hereinafter called the Act).

The facts are not in dispute and may be briefly narrated. The petitioner, Balaji, his six sons, and his wife, by name Godawaribai, constituted a joint Hindu family. The family was a trading family and it had, besides business in money-lending, considerable agricultural lands. On November 23, 1946, two of his sons became divided from the family. In the year 1951, through the intervention of mediators the other members of the family were also divided and another major member started a separate business on his own. Thereafter, the petitioner and his wife formed themselves into a partnership to carry on their business and admitted their three minor sons to the benefits thereof. On September 22, 1952, a partnership deed was executed giving an equal share to each of the partners. On the basis of the partnership deed, in respect of the assessment year 1952-53, the petitioner filed two applications before the Income-tax Officer, Wardha, one under section 25A of the Act for recognizing the partition, and the other und

The first question raised is whether the appropriate Legislature had the competence to enact section 16(a)(i) and (ii) of the Act. It would be convenient at the outset to read the relevant part of the said section :

"16. (3) In computing the total income of any individual for the purpose of assessment, there shall be included -

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly -

(i) from the membership of the wife in a firm of which her husband is a partner;

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is partner."

Section 16 provides for the computation of total income of a person and describes what sums are to be included and what sums are to be excluded therefrom. Under sub-clauses (i) and (ii) of clause (a)

of sub-section (3) of the said section, the shares in the profits of the firm received by the wife and the minor children shall be included in the total income of the individual. Under the said sub-clauses an individual is made liable to pay tax in respect of the income of his wife and minor children, though the said liability is confined to the circumstances mentioned therein.

Learned counsel for the petitioner contended that entry 54 in the Federal Legislative List of the Government of India Act, 1935, did not confer on the Legislature any power to tax A on the income of B and, therefore, the sub-section was ultra vires the Legislature. Entry 54 of the Federal Legislative List ran : "Taxes on income other than agricultural income". The said entry is identical with item 82 of List 1 of the Seventh Schedule to the Constitution. The argument is that income-tax is a tax imposed upon a person in relation to his income and, therefore, A can only be taxed on his income and not on the income of B. Learned counsel for the respondents, on the other hand, would contend that the express terms of the entry did not restrict the legislative power to tax only the income of the person assessed, that what could be taxed under that entry was "income" and, therefore, nothing prevented the Legislature from imposing the incidence of the tax on a person other than the person whose income was to be asse

It is well settled that the entries in the Lists are not powers but are only fields of legislation, and that the widest import and significance must be given to the language used by Parliament in the various entries. Sarkar J., speaking for this court, observed in Sardar Baldev Singh's case thus :

"So entry 54 should be read not only as authorising the imposition of a tax but also as authorising an enactment which prevents the tax imposed being evaded. If it were not to be so read then the admitted power to tax a person on his own income might often be made infructuous by ingenious contrivances."

This decision holds that the said entry can sustain a law made to prevent the evasion of tax.

The short question, therefore, is whether section 16(3)(a)(i) and (ii) is a provision made by the Legislature to prevent evasion of tax. Under the relevant provision of the Income-tax Act, if a firm is registered, the share of each partner in the profit of the firm would be added to his other income and charged as part of his total income. After 1956, the position is the same except in one regard with which we are not now concerned. This provision was intended for the benefit of partners of a business, for it made them liable only to pay tax on their own income. But it gave an effective handle to evade taxation in another direction. A husband or a father could nominally take his wife or his minor sons in partnership with him so that the tax burden might be lightened, for, if the income was divided between a number of people, the income derived by an individual therefrom might fall under the limits of taxable income or under a less onerous slab. This device enables an assessee to secure the entire income of t

The constitutional validity of the said provision was next questioned on the ground that it violated the doctrine of equality before the law enshrined in article 14 of the Constitution. Under article 14. "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." But decisions of this court permitted classification if there was reasonable basis for the differentiation. It was held that what article 14 prohibited was class legislation and not reasonable classification for the purpose of legislation. Two conditions were laid down for passing the test of permissible classification, namely, (i) the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that the differentia must have a rational relation to the object

sought to be achieved by the statute in question. Under the impugned sub-section, an individual is taxed on the i

It was then said that there might be genuine partnerships between an individual and his wife and, therefore, there is no reasonable relation between the classification and the object sought to be achieved, at any rate to the extent of those genuine cases. But there is no classification between genuine and non-genuine cases : the classification is between cases of partnership between husband, wife and/or minor children, whether genuine or not, and partnerships between others. In demarcating a group, the net was cast a little wider, but it was necessary, as any further sub-classification as genuine and non-genuine partnerships might defeat the purpose of the Act.

Strong reliance is placed upon the decision of the Supreme Court of America in *Albert A. Hoeper v. Tax Commission of Wisconsin* and it is, therefore, necessary to consider it in some detail. There, the appellant married a widow. Both the parties had separate incomes and made separate returns. Under the relevant tax Act, the incomes of the wife were added to the income of the husband for the purpose of taxation. The result was to increase the rate of the appellant's income-tax and to charge him with a tax otherwise payable by his wife. It was contended that the said law deprived the taxpayer of the due process and equal protection of the law. Roberts J., who expressed the majority view, accepted the contention and struck out the law. The learned judge observed at page 251 thus :

"We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the 14th Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income."

The Court of Appeal in that case assigned two reasons for sustaining the provisions : one was that the provisions under attack were necessary to prevent frauds and evasions of tax by married persons, and the other was that it was a regulation of marriage. The first reason was not accepted by the Supreme Court on the ground that the claimed necessity could not justify the otherwise unconstitutional exaction; and the second reason was rejected for the reason that it could hardly be claimed that a mere difference in social relations so altered the taxable status of one receiving income as to justify a different measure for the tax. Holmes J., in his dissenting judgment, justifies his view on the ground that the statute was the outcome of thousand years of history indicating that husband and wife were one and also for the reason that it had a tendency to prevent tax evasion. Prima facie the majority view supports the contention of learned counsel for the petitioner, but a deeper scrutiny reveals fundamental diff erican decisions, that the need for such a law is not in existence. On the contrary, there is a direct decision of the madras High Court in *Amina Umma v. Income-tax Officer, Kozhikode*, sustaining the said provision on the ground of reasonable classification. Rajagopalan J., speaking for the Division Bench, after considering the relevant decisions on the subject, observed at page 150 thus :

"The reasonableness or otherwise of a classification has to be decided with reference to all the circumstances of the case including the social and economic structure prevalent in the are where the taxing statute is in operation... An attempt to prevent by legislation an evasion of just tax liability and the necessary classification to give effect to that object cannot, in our view, be termed unreasonable".

With respect we give our full assent to the provisions is based upon article 19(1)(f) and (g) of the

Constitution. The said constitutional provisions read :

"19. (1) All citizens shall have the right - ...

(f) to acquire, hold and dispose of property; and

(g) to practice any profession, or to carry on any occupation, trade or business."

It was argued that as the husband is statutorily made to pay certain amount as tax on the income of his wife, to that extent, he is deprived of his property by the State action and, therefore, his fundamental right under section 19(1)(f) is infringed. The impugned statutory provision, the argument proceeds, is an unreasonable restriction on the said right, as the husband is compelled to pay tax on the income of his wife and children who are in law distinct legal persons.

The learned Additional Solicitor-General broadly contended that a tax imposed by authority of law cannot be questioned on the ground that the law infringes the provision of article 19 of the Constitution. We cannot see any justification for this contention in any of the constitutional provisions. The relevant provisions of the Constitution read :

"265. No tax shall be levied or collected except by authority of law."

"13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void...

(3) In this article, unless the context otherwise requires, -

(a) 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

A combined and plain reading of the said provisions makes it abundantly clear that a law which is inconsistent with any of the provisions of Part III is void. It cannot be denied that a law providing for levy and collection of taxes is a law within the meaning of Part III of the Constitution, and therefore it must stand the test laid down by article 13 of the Constitution. The "law" in article 265 of the Constitution must be a valid law. A law to be valid must not only be one passed by the Legislature in exercise of a power conferred on it, but must also be one that does not infringe the fundamental rights declared by the Constitution. When a license fee was imposed by a municipality under a bye-law framed in excess of the power conferred on it by the provisions of the U.P. Municipalities Act, this court in *Mohammed Yasin v. Town Area Committee, Jalalabad*, held that the enforcement of his right under article 19(1)(g) of the Constitution. Where a State sought to impose sales tax in exercise of a power conferr

"It is, therefore, manifest that the law must satisfy two tests before it can be a valid law, namely, (1) that the appropriate legislature has competency to make the law; and (2) that it does not take away or abridge any of the fundamental rights enumerated in

Part III of the Constitution."

Section 16(3)(a) of the Act must, therefore, pass both the tests and if it violates any of the provisions of article 19, to the extent it is inconsistent with the said provisions, it will be void. This view is in consonance with that expressed by this court in *Kunnathat Thathunni Moopil Nair v. State of Kerala*. There, the petitioners impugned the constitutionality of the Travancore-Cochin Land Tax Act (XV of 1955) as amended by the Travancore-Cochin Land Tax (Amendment) Act (X of 1957) and *Sinha C.J.*, speaking for the court, held that the Act was void as infringing not only article 14 of the Constitution but also article 19(1)(f) thereof. The learned Chief Justice, after considering the relevant provisions of the Act and having regard to the unreasonable nature of the restrictions, came to the conclusion that the provisions of the Act were unconstitutional, viewed from the angle of the provisions of article 19(1)(f) of the Constitution.

We cannot, therefore, accept the broad contention of the learned Additional Solicitor-General that a tax law cannot be questioned on the ground that it infringes article 19 of the Constitution.

Even so the learned Additional Solicitor-General contended that the provisions of section 16(3)(a)(i) and (ii) of the Act constituted only reasonable restrictions on the exercise of the rights conferred under article 19(1)(f) and (g) of the Constitution, in the interest of the general public.

Learned counsel for the petitioner argues that the restrictions are not reasonable for the following reasons : (i) the husband is made to pay tax on the income which his wife derived from the business, that is, a tax is levied on one person on the income of another; (2) such an imposition not only prevents a husband from taking his wife as a partner in his business but also prevents a wife, who has got a business of her own, from taking her husband as a partner in the business : (3) the husband has to pay a tax at a rate higher than that he would have to pay if the income of the wife was not added to his income; (4) the same situation is created inter se between a parent and his minor children vis-a-vis their joint business. Learned counsel, therefore, contended that the provisions prevented the honest pooling of resources of the members of a family so intimately connected with each other to the detriment of the family prosperity, and that it amounted to an unreasonable restriction on the said fundamental ri

"The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

So judged, can it be said that the restrictions imposed under the impugned provisions are not reasonable ? The object sought to be achieved was to prevent the prevalent abuse, namely, evasion of tax by an individual doing business under a partnership nominally entered with his wife or minor children. The scope of the provisions is limited only to a few of the intimate members of a family who ordinarily are under the protection of the assessee and are dependents of him. The persons selected by the provisions, namely, wife and minor children, cannot also be ordinarily expected to carry on their business independently with their own funds, when the husband or the father is alive and when they are under his protection. Doubtless some of the said partnerships may be genuine and the wife or minor children may have contributed capital to the business; but the provision do not in any way affect their rights and even the liability inter se between the husband and the wife or the minor children, as the case may be, in

Petition dismissed.

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