Elel Hotels and Investments Ltd. and Another

Vs

Union of India. (and other writ petitions)

Writ Petitions Nos. 254 to 261 of 1981 with Writ Petitions Nos. 279, 294 and 295, 664 to 669, 1334 and 1335, and 1408 and 1409, 1415 to 1420, 1423 to 1426, 1430 and 1431, 1434 to 1437, 1454 to 1466, 1472 to 1486, 1491 to 1494, 1501 and 1502, 1512, 1532, 1576 to 1578, 1580, 1597, 1629 and 1630, 1635 and 1636, 1647 and 1648, 1720, 1728 and 1729, 1744, 1815, 1829, 1850, 1878, 1958, 2722, 2870, 3257, 3404, 3898, 4267, 5043 to 5045, 7038, 8092, 9430 and 9431, 1432 and 1433, 1723 and 1724, 1877 and 1878, 288 and 289, 1468, 1848 and 1936 of 1981, 8114 and 8115 and 1342 of 1982 and 392 of 1987

(CJI R. S. Pathak, S. Natarajan, S. Ranganathan, Sabyasachi Mukharji, M. N. Vankatachaliah JJ)

02.05.1989

JUDGMENT

VENKATACHALIAH J. –

1. In this batch of writ petitions under article 32 of the Constitution of India, the petitioners who are hoteliers, challenge on grounds of lack of legislative competence and of violation of articles 14 and 19(1)(g), the constitutional validity of the Hotel Receipts Tax Act, 1980 ("the Act" for short), which imposed a special tax on the gross receipts of certain categories of hotels. Section 3 of the Act limits the application of the Act to those hotels where the "room charges" for residential accommodation provided to any person during the previous year are Rs. 75 or more per day per individual. If a hotel is within this class, then section 5 brings to charge the hotel's "chargeable receipts" as defined under section 6 of the Act.

The Act was passed on December 4, 1980 and came into force on December 9, 1980 when it received the assent of the president of India. The levy under the Act commences from the assessment year 1981-82 and bring to tax the chargeable receipts of the corresponding previous year. The rate of tax is a flat rate of 15 per cent. of the "chargeable receipts" defined in section 6 as the total amount of all charges, by whatever name called, received by, or accruing or arising to the assessee in the previous year in connection with the provision of residential accommodation, food, drink and other service in the course of carrying on the business of a hotel. But such charges received from persons within the purview of the Vienna Convention on Diplomatic Relations, 1961, or vienna Convention on Consular Relations are exempt from the tax. The machinery under the income-tax Act, 1961, is engrafted for purposes of assessment, levy and collection of tax under the Act.

It is however relevant to note that though the Act is put into force from the assessment year 1981-82 the levy was discontinued from February 27, 1982.

This batch of writ petitions was heard along with Writ petition No. 1395 of 1987 [1989] 178 ITR 97 (SC) (supra) and the connected writ petitions in which the constituational validity of the Expenditure-tax Act, 1987 was challenged on substantially similar grounds. In the present Act, the

levy is on "chargeable receipts" while in the Expenditure-tax Act, 1987, it is on "chargeable expenditure" which represents substantially the same items as constitute : "chargeable receipts" under the present Act. We have disposed of writ Petition No. 1395 of 1987 and the connected matters by a separate judgment.

Section 3, 5, 6, of the Act have a bearing on the application of the contentions urged in support of the challenge to the constitutionality of the Act. Section 3 reads :

> "3. (1) Subject to the provisions of sub-section (2) and sub-section (3), this Act shall apply in relation to every hotel wherein the room charges for residential accommodation provided to any person at any time during the previous year are seventy-five rupees or more per day per individual.
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> Explanation - Where the room charges are payable otherwise than on daily basis or per individual then the room charges shall be computed as for a day and per individual based on the period of occupation of the residential accommodation for which the charges are payable and the number of individuals ordinarily permitted to occupy such accommodation according to the rules and custom of the hotel.
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> (2) Where a composite charge is payable in respect of residential accommodation and food, the room charges included therein shall be determined manner.
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> (3) Where -
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> (i) a composite charge is payable in respect of residential accommodation, food, drink and other services, or any of them and the case is not covered by the provisions of sub-section (2); or
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> (ii) it appears to the income-tax Officer that the charges for residential accommodation, food, drink or other services are so arranged that the room charges are understated and the other charges are overstated,
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> the income-tax officer shall, for the purpose of sub-section (1), determine the room charges on such reasonable basis as he may deem fit."

Section 5(1) provides :

> "5.(1) Subject to the provisions of this Act, there shall be charged on
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> every person carrying on the business of a hotel in relation to which this Act applies, for every assessment year commencing on or after the 1st day of April 1981, a tax in respect of his chargeable receipts of the pervious year art the rate of fifteen per cent. of such receipts :
>
> Provided that where such chargeable receipts included any charges received in foreign exchange, then, the tax payable by the assessee shall be reduced by the amount equal to five per cent. Of the charges (exclusive of the amounts by way of sales tax, entertainment tax, tax on luxuries or tax under this Act) so received in foreign exchange."

[Section 5(2) omitted as unnecessary except Explanation (ii)]

Explanation (ii) to section 5(2) provides :

> "any food, drink or other services shall be deemed to have been provided on the premises of a hotel if the same is or are provided in the hotel or any place appurtenant thereto and where the hotel is situate in the part of the building, in any other of the building."

Section 6 provides :

> "6. (1) Subject to the provisions of this Act, the chargeable receipts of any previous year of an assessee shall be the total amount of all charges, by whatever name called, received by, or accruing or arising to the assessee in connection with the provision of residential accommodation, food, drink and other service or any of them (including such charges from per sons not provided with such accommodation) in the course of carrying on the business of a hotel to which this Act applies and shall also include every amount collected by the assessee by was of tax under this Act, sales tax, entertainment tax and tax on luxuries.
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> (2) For the removal of doubts, it is hereby declared that where any such charges have been included in the chargeable receipts of any previous year as charges accruing or arising to the assessee during that previous year, such charges shall not be included in the chargeable receipts of any subsequent previous year in which they are received by the assessee."

Other provisions are machinery provisions, providing for the mode of assessment, levy and collection of the Tax, for offences, penalties, punishments, etc. The challenge to the Act, is in the main lack of legislative competence on the part of the Union Parliament to exact the law. Respondent Union seeks to support and legislation under and as referable to entry 82 of List I, i.e., taxes on income. The contentions raised in support of the petitions are these :

> (a) That, in pith and substance, the law is one imposing a tax on luxuries provided in hotels and, therefore, the law is one under entry 62, list II of the Seventh Schedule to the Constitution and outside the Union power;
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> (b) That, at all events, the Act is patently violative of article 14 in that the basis of classification of hotels on the dividing line of room alone any rational nexus with the object of the law, viz., to impose a tax on income;
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> While hotels which collect room charges of Rs. 75 per day from any individual in the previous year fall within the tax net, other hotels which have much higher gross receipts are left out. The classification does not include all persons who from the point of view of the object of the Act, are similarly situated.
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> (c) That the law imposed unreasonable burden on the petitioners' freedom of business and constitutes violation of article 19(1)(g) of the Constitution.

Re : Contention (a) : Shri Palkhivala contended that the impugned law which seeks to imposed a tax on what is styled "chargeable receipts" which include payments for residential accommodation,

food, drink, and other services at petitioners' hotels really brings to tax "luxuries" - an import under entry 62, List ll, reserved to the State Learned Counsel submitted that the reliance by the respondents on entry 82, List I, to support the import as a tax on income is wholly misconceived inasmuch as, the concepts of "income" and "tax on income" have definite legal connotation crystallised by settled legislative practice and do not admit of "gross receipts" being treated as "income" for purpose of levy of tax under entry 82, List I. Learned counsel submitted that neither the nomenclature given to the tax nor the standard by which it is measured can determine its true nature and the Legislature cannot enlarge its power by choosing an appropriate name to the tax.

To show the essential characteristics of what is the concept of "income" learned counsel referred to certain observations of the Supreme Court of the Union States of America :

> "..... it becomes essential to distinguish between what is and what is not income as the term is there used; and to apply the distinction, as case arise, according to truth and substance, without regard to form Congress cannot, by any definition it may adopt, conclude the matter, since it cannot, by legislation, alter the Constitution from which alone it derives its power to legislate and within whose limitations alone that power can be lawfully exercised.
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> The fundamental relation of 'capital' to 'income' has been much discussed by economists, the former being likened to the tree or the land, the latter to the fruit or the crop; the former depicted as a reservoir supplied from springs, the latter as the outlet stream, to be measured by its flow during a period of time."

Learned counsel also relied upon the following observations of Gajendragadkar J. in Navnit Lal C. Javeri v. K. K. Sen, AAC [1965] 56 ITR 198, 204 (SC); [1965] 1 SCR 909, 915 :

> "..... Parliament can choose to tax as income an item which in no rational seance can be regarded as a citizen's income. The item taxed should rationally be capable of being considered as the income of a citizen."

Learned counsel submitted that the gross receipts of a hotel received from a customer towards room charges, food, drink, and other service provided at the hotel cannot constitute "income" known as such a to law. The submission, in substance it two fold : first that the "chargeable receipts" as conceived in the Act do not constitute "income" for the purposes, and within the meaning, of entry 82 List I, as the receipts cannot rationally be related to the concept of "income"; and secondly, that in pith and substance, the levy is one founder entry 62, List II, within the States' power. Learned counsel, inviting attention to the following observations of Lord Salmond in Governor-General in Council v. Province of Madras [1945] FCR 179, 191; AIR 1945 PC 98, 100 :

> "..... Their Lordship do not doubt that the affect of these words is that, if the legislative powers of the Federal and Provincial Legislatures, which are enumerated in List I and List II of the Seventh Schedule, cannot fairly be reconciled the latter must give way to the former. But it appears to them that it is right first to consider whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning which if less wide than it might in another context bear, is yet one that can properly be given to it, an equally giving to the language of the Provincial Legislative List a meaning which it can properly bear."

submitted that entry 62, List II, and entry 82, List I, would require to be reconciled accordingly.

Learned Attorney-General, appearing for the Union of India, sought, to support and import as a tax on income under entry 82 of List I. It was urged that the word "income" in that entry broadly indicates the topic or field of legislation and that it should not be read in a narrow or pedantic sense, but must be given its widest amplitude and should not be limited by any particular definition which a Legislature might have chosen for the limited purposes of that legislation. The statutory definitions of and meaning given to "income" are matters of legislative policy and do not exhaust the content of the legislative entry by the particular manner in which, and the extent to which, the statute has chosen to define that expression.

On a consideration of the matter, we are of the opinion that the sub- missions of the learned Attorney-General as to the source of the legislative power to enact a law of the kind in question require to be accepted. The word "income" is of plastic import. In interpreting expressions in the legislative lists, a very wide meaning should be given to the entries. In understanding the scope and amplitude of the expression "income" in entry 82, List I, any meaning which fails to accord with the plenitude of the concept of "income" in all its width and comprehensiveness should be avoided. The cardinal rule of interpretation is that the entries in the legislative lists are not be read in narrow or restricted sense and that 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. The widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them. Reference to legislative practice may be admissible in reconciling two conflicting provisions in rival legislative lists. In construing the words in a constitutional document conferring legislative power, the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.

In Navinchandra Mafatlal v. CIT [1954] 26 ITR 758, 763, 764 (SC), [1955] 1 SCR 829, the question was whether the provisions of the section 12B of the India Income-tax Act, 1922, imposing a tax on capital gains was ultra vires the powers of the federal Legislature under the Government of India Act, 1935. It was contended that tax on income under entry 54, List I, of the Government of India Act, 1935, did not embrace within its scope a tax on capital gains. This contention was rejected. This court, after referring to the following observations of the Judicial Committee in Raja Bahadur Kamakshya Narain Singh of Ramgarh v. CIT [1943] 11 ITR 513 (PC) :

> "Income, it is true is a word difficult and perhaps impossible to define in any precise general formula. It is a word of the broadest connotation."

proceeded to observe :

> "What, then, is the ordinary, natural and grammatical meaning of the word 'income' ? According to the dictionary, it means 'a thing that comes in' (See Oxford Dictionary, Vol. v, page 162; Stroud, Vol. II pages 14-16). In the United states of America and in australia, both of which also are English speaking countries the word 'income' is understood in a wide sense so as to include a capital gain. Reference may be made-to Eisner v. Macomber 9 252 U. S. 189; 64 L. Ed. 521), Merchant's Loan and Trust Co. v. Smietunka (225 U. S. 509; 65 L. Ed. 751) and United State of America v. Stewart (311 U. S. 60; 85 L. Ed. 40) and Reach v. Federal Commissioner of Taxation (66 CLR 198). In each of these cases, very wide meaning was ascribed to the word 'income' as its natural meaning. The relevant observations of the learned judges

> deciding those cases which have been quoted in the judgment of Tendolkar J., quite clearly indicate that such wide meaning was put on the word 'income' not because of any particular legislative practice either in the United State or in the Commonwealth of Australia but because such was the normal concept and connotation of the ordinary English word 'income'. Its natural meaning embraces any profit or gain which is actually received. This is in consonance with the observation of Lord Wright to which reference has already been made."

Indeed, Navnit Lal's case [1965] 565 ITR 198, 204 (SC), relied upon by Shri Palkhivala, would itself concluded the point :

> "In dealing with this point, it is necessary to consider what exactly is the denotation of the would 'income' used in the relevant entry. It is hardly necessary to emphasised that the entries in the Lists cannot be read in a narrow or restricted sense,.....
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> But in considering the question as to whether a particular item in the hands of citizen can be regarded as his income or not, it would be inappropriate to apply the test traditionally prescribed by the income-tax Act as such."

In Bhagwan Dass Jain v. Union of India [1981] 128 ITR 315; AIR 1981 SC 907 the question of includibility, for the purposes of income-tax of the assessee's notional income from a house property in the personal residential accusation of the assessee was assailed on the ground that it did not constitute "income" for the purposes and within the meaning of entry 82 of List I. The amplitude of the expression "income" in entry 82 of List I came in for consideration. In that context, this court said (at p. 321) :

> "Even in its ordinary economic sense, the expression 'income' includes not merely what is received or what comes in by exploiting the use of a property but also what one saves by using it oneself. That which can be converted into income can be reasonably regarded as giving rise to income. The tax levied under the Act is on the income (though computed in an artificial way) from house property in the above sense and not on house property."

The expression "income" in entry 82, List I, cannot, therefore, be subjected by the implication, to any restriction by the way in which that term might have been deployed in a fiscal statute. A particular statute enached under the entry might, as a matter of fiscal policy, seek to tax some species of income alone. The definitions would, therefore, be limited by the consideration of fiscal policy of a particular statute. But the expression "income" in the legislative entry has always been understood in a wide and comprehensive connotation to embrace within it every kind of receipt or gain either of a capital nature or of a revenue nature. The "taxable receipts" as defined in the statute cannot be held to fall outside such a "wider connotation" of "income" in the wider constitutional meaning and sense of the term as understood in entry 82, List I.

contention (a), therefore, fails.

Re : Contentions (b) and (c) : We had occasion to deal with a similar argument in the other batch of cases dealing with the constitutionality of the Expenditure-tax Act, 1987, where the "chargeable expenditure" incurred in particular class of hotels alone was brought to tax, leaving the other hotels out. We have rejected the challenge to the constitutionality of the provisions of that Act based on

articles 14 and 19(1)(g). There, hotels in which room charges were Rs. 400 or more per day per person were alone brought under the Act. The differentia was held to be both intelligible and endowed with a rational nexus to the object of the legislation, viz., bringing to tax certain class of expenditure incurred at hotels which were ligislatively presumed to attract an economically superior class of clientele. Having regard to the wide latitude available to the Legislature in fiscal adjustments, the classification, was found not violative of article 14.

Similar contentions as to the unreasonableness of the restriction which the imposition of the impugned tax was said to bring about on the petitioners' freedom of trade and business and the adverse effect of this tax on a significant area of national economy generally and the tourism industry in particular have been considered in the petitions assailing the vires of the Expenditure-tax Act, 1987. It is now well-settled that very wide latitude is available to the Legislature in the matter of classification of objects, persons and things for purposes of taxation. It must, needs to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a mere source of raising money to defray expenses of Government. It is a recognised fiscal tool to achieve fiscal and social objectives. The differentia of classification presupposes and proceeds on the premise that it, distiguishes and keeps apart as a distinct class hotels with higher economic status reflected in one of the indicia of such economic superiority. The presumption of constitutionality, has not been dislodged by the petitioners by demonstrating how even hotels, not brought into the class, have also equal or higher chargeable receipts and how the assumption of economic superiority of hotels to which the Act is applied is erroneous or irrelevant.

For the reasons stated in and following our judgment in the said W. P. No. 1395 of 1987 - [1989] 178 ITR 97 (SC) (supra) and connected cases, contentions (b) and (c) are also held and answered against the petitioners.

In the result, for the foregoing reasons, these petitions are dismissed. There will, however, be no order as to costs in these petitions.

Petitions dismissed.

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