Elel Hotels and Investments Limited and Others

Vs

Union of India

Writ Petitions Nos. 254-261 of 1981

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

02.05.1989

JUDGMENT

VENKATACHALIAH, J. -

1. In this batch of writ petitions under Article 32 of the Constitution of India 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, ('Act' for short) which imposes a special tax on the gross receipts of certain category of hotels. Section 3 of the Act limits the application of the 'Act' to those hotels where the "roomcharges" 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.

2. 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 Indira. The levy under the 'Act' commences from the assessment year 1981-82 and brings 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 services in the course of carrying on the business of a hotel. But such charges received from persons within purview on 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 purpose of assessment, levy and collection of tax under the Act.

3. 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.

4. This batch of writ petitions were heard along with Writ Petition No. 1395 of 1987 (Federation of Hotel and Restaurants Assn. of India v. Union of India, (1989) 3 SCC 634) and the connected writ petitions in which the constitutional 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 to constitute 'chargeable receipts' under the present 'Act'. We have disposed of W.P. No. 1395 of 1987 and the connected matters by a separate judgment.

5. Sections 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 75 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 in the prescribed 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 and 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 purposes of sub-section (1), determine the room charges on such reasonable basis as he may deem fit."

6. Section 5(1) provides :

> "5. (1) Subject to the provision of this Act, there shall be charged on every person carrying on the business of the 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 previous year at the rate of 15 per cent. of such receipts :
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> Provided that where such chargeable receipts include any charges received in foreign exchange, then, the tax payable by the assessee shall be reduced by an amount equal to five per cent. of the charges (exclusive of the amounts payable by way of sales tax, entertainment tax, tax on luxuries or tax under this Act) so received in foreign exchange.
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> Explanation. - (omitted as unnecessary)
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> 5. (2) (omitted as unnecessary except Explanation (ii))
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> 7. Explanation (ii) to Section 5 (2) provides :

"For the purposes of this sub-section, -

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(ii) 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 a part of building, in any other part of the building."

8. 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 services or any of them (including such charges from persons 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 way of tax under this Act, sales tax, entertainment tax and tax on luxuries.

(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 appeals; 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 enact the law. Respondent-Union seeks to support the 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;

(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 charges, though in itself an intelligible one, has, however, no nexus, let alone any rational nexus with the objects of the law viz., to impose a tax on income.

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 objects of the Act, are similarly situated;

(c) That the law imposes unreasonable burden on the petitioners' freedom of business and constitutes a violation of Article 19(a)(g) of the Constitution.

Re Contention (a)

9. Shri Palkhivala contended that the impugned law which seeks to impose 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" - and impost under Entry 62, List II, reserved to the States. Learned counsel submitted that the reliance by the respondents on Entry 82, List I, to support the impost as a tax on income is wholly misconceived inasmuch as, the concepts of "income" and "tax on income" have definite legal connotations crystallised by settled legislative practice and do not admit of "gross receipts" being treated as "income" for purposes 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.

10. To show the essential characteristics of what is the concept of 'income' learned counsel referred to certain observations of the Supreme Court of the United States of America in Eisner v. Macomber :

> "... 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 cases 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."

11. Learned counsel also relied upon the following observations of Gajendragadkar, J, in Navnitlal C. Javeri v. K. K. Sen ((1965) 1 SCR 909, 915 : AIR 1965 SC 1375 : (1965) 56 ITR 198) :

> ".... This doctrine does not however, mean that Parliament can choose to tax as income on item which in no rational sense an be regarded as a citizen's income. The item taxed should rationally be capable of being considered as the Income of a citizen."

12. Learned counsel submitted that the gross receipts of a hotel received from a customer towards room charges, food, drink and other services provided at the hotel cannot constitute 'income' known as such to law. The submission, in substance are twofold : first that while the "chargeable receipts" as conceived in the 'Act' do not constitute 'income' for 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 under Entry 62 List II within 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 : (1945) 1 MLJ 225.)

> ".... Their Lordships do not doubt that the effect 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, and 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.

13. Learned Attorney-General, appearing for the Union of India sought to support the impost 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 should not be read in a narrow and pedantic sense, but must be given its widest amplitude and that it 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 meanings 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.

14. On a consideration of the matter, we are of the opinion that the submission 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 elastic 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 or the concept of 'income' in all its width and comprehensiveness should be avoided. The cardinal rule of inter pretation is that the entries in the legislative lists are not to be read in a 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 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.

15. In Navinchandra Mafatlal v. CIT ((1955) 1 SCR 829 : AIR 1955 SC 58 : (1954) 26 ITR 758), the question was whether the provisions of Section 12(b) of the Indian 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 taxes 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 Kamakshya Narain Singh v. CIT ((1943) 11 ITR 513 : AIR 1943 PC 153 : 70 IA 180)

> "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 : (SCR p. 837)

> "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 a to include a capital gain. Reference may be made to Eisner v. Macomber, (252 US 189 (1919)) Merchants' Loan & Trust Co. v.

> Smietunka ((1925) 255 US 509), United States v. Stewart ((1940) 311 US 60) and Resch v. Federal Commissioner of Taxation ((1942) 66 CLR 198). In each of these case very wide meaning was ascribed to the word 'income' as its natural meaning. The relevant observations of learned Judges deciding those cases which have been quoted in the judgment of Tendolkar, J. quite clearly indicate that such wide meaning was put upon the word 'income' not because of any particular legislative practice either in the United States 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 observations of Lord Wright to which reference has already been made."

16. Indeed, Navneet Lal case ((1965) 1 SCR 909, 915 : AIR 1965 SC 1375 : (1965) 56 ITR 198) relied upon by Shri Palkhivala, would itself conclude the point : (SCR p. 915)

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

In Bhagwan Dass Jain v. Union of India ((1981) 2 SCC 135 : 1981 SCC (Tax) 84 : AIR 1981 SC 907), the question of includibility, for purposes of income-tax of the assessee's notional income from a house property in the personal residential occupation 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 : (SCC p. 141, para 14)

> "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."

17. The expression 'income' in Entry 82, List I cannot, therefore, be subjected, by implication, to any restriction by the way in which that term might have been deployed in a fiscal statute. A particular statute enacted under the entry, might, as a matter of fiscal policy, seeks to tax some species of income alone. The definitions would, therefore, be limited by the consideration of fiscal policy of a particular statute. But 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' or 'income' in the wider constitutional meaning and sense of the term as understood in Entry 82, List I.

18. Contention (a), therefore fails.

Re Contention (b) and (c)

19. We had an 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 a 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 objects of the legislation viz., bringing to tax certain class of expenditure incurred at hotels which were legislatively 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.

20. Similar contentions as to the unreasonableness of the restrictions 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 a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must 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 distinguishes 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 applies is erroneous or irrelevant.

21. For the reasons stated in and following our judgment in the said W.P. No. 1395 of 1987 ((1989) 3 SCC 634) and connected cases contentions (b) and (c) are also held and answered against the petitioners.

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

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