Union of India and Others

Vs

M. V. Valliappan and Others

Civil Appeals Nos. 1612-23 of 1988

(S. P. Bharucha, B. N. Kirpal, S. R. Babu S. M. Quadri, M. B. Shah JJ)

27.07.1999

JUDGMENT

SHAH, J. -

1. These appeals by special leave are filed against the judgments and orders passed by the High Court of Madras dated 13-1-1988 in Writ Petitions Nos. 992 and 993 of 1981, 162 and 6036 of 1983, 904-05, 994, 995, 5430, 6162 and 9283 of 1984, by the High Court of Karnataka dated 9-11-1993 in Writ Petitions Nos. 12312 to 12317 of 1987 and dated 25-11-1992 in WP No. 23708 of 1992, and by the High Court of Gujarat dated 29-6-1993 in Income Tax Applications Nos. 164 and 165 of 1993.

2. By a common judgment and order passed in various writ petitions filed before the Madras High Court (M. V. Valliappan v. ITO ((1988) 170 ITR 238 (Mad)), the High Court struck down the provisions of Section 171(9) of the Income Tax Act, 1961 as violative of Article 14 of the Constitution of India and that it suffers from the vice of legislative incompetence. In the High Court, a number of writ petitions were filed involving questions relating to the validity, scope and interpretation of the provisions of Section 171(9). For our purpose, it would suffice to mention the facts of Writ Petition No. 994 of 1984 for deciding the question involved in these appeals. In the said petition, it was the case of the petitioner that he was a karta of a Hindu undivided family consisting of himself, his wife, his minor son and minor daughter. It was his contention that the Hindu undivided family was a partner in a partnership firm in which its funds were invested. On 13-4-1979, a partial partition of certain assets belonging to the Hindu undivided family was effected with effect from that date by executing a deed of partition. An application under Section 171(2) of the Income Tax Act, 1961 for recognition of the said partial partition came to be filed before the Income Tax Officer. The Income Tax Officer passed an order dated 28-12-1979 recognising the partial partition. Thereafter for Assessment Year 1980-81, a return was submitted on behalf of the Hindu undivided family on 12-4-1980 which did not include the income from the property which was the subject-matter of partial partition. The income derived from the assets that were the subject-matter of partial partition were declared by the respective individuals in their respective returns. In accordance with the said return, assessment was finalised. Similarly, wealth tax return for Assessment Year 1980-81 was also filed and accepted by the Income Tax Officer. Thereafter, a notice dated 4-3-1983 under Section 148 of the Act was received by the petitioner stating that income of the petitioner had escaped assessment and the Income Tax Officer proposed to reopen the completed assessment for the year 1980-81. The assessee objected to the reopening of the assessment on the ground that order under Section 171 of the Act recognising the partition not having been cancelled or revoked, continued to be effective and, thereafter, no income from the partitioned properties could be assessed in the hands of the Hindu undivided family. These

objections were rejected by the ITO by order dated 30-11-1983. Fresh assessment order for HUF was made by including the income relating to the assets which were partially partitioned and allotted to the individual members of the Hindu undivided family. That reassessment order was challenged by filing a writ petition. Facts in the other writ petitions were also similar to the facts as stated above.

3. The High Court after considering the various contentions and decisions relied upon by the parties arrived at and summarised its conclusion as under :

> "(1) Section 171(9) of the Income Tax Act, 1961 cannot be sustained on the ground that it is a measure to counteract the tendency to tax avoidance and it suffers from the vice of legislative incompetence.
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> (2) Section 171(9) of the Income Tax Act, 1961 is also void on the ground of violation of Article 14 of the Constitution of India.
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> (3) Section 171(9) of the Income Tax Act, 1961 entrenches upon the charging provision in Section 4 of the Income Tax Act, 1961 and purports to bring to charge the income which does not belong to the Hindu undivided family to be assessed in the hands of the Hindu undivided family. The provision thus enlarges the scope of Sections 4 and 5 of the Act and is, therefore, invalid.
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> (4) Section 171(9) of the Income Tax Act, 1961 has the effect of fastening a penal liability on the Hindu undivided family when in fact, in the case of a partial partition, the liability for concealment of income is that of the member of the Hindu undivided family who earned the income in his own right and not of the Hindu undivided family.
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> (5) The effect of Section 171(9) of the Income Tax Act, 1961 is that it virtually negatives the right of partition under the personal law only in certain cases of partition after December 31, 1978 and there is no valid basis or justification for treating Hindu undivided families separately in a hostile manner with reference to the date December 31, 1978, the choice of the date being clearly arbitrary.
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> (6) The operation of Section 171(9) of the Income Tax Act, 1961 is restricted only to cases where a claim in respect of a partial partition which is effected after December, 31, 1978 is made for the first time in Assessment Year 1980-81.
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> (7) The provisions of Section 171(9) of the Income Tax Act, 1961 will not fasten any liability in respect of a partial partition which has already been recognised in Assessment Year 1979-80, and a finding recorded in respect of such a claim for Assessment Year 1979-80 will not be affected by the invalidating provision in clause (a) of sub-section (9) of Section 171 of the Act."

4. In Civil Appeals Nos. 12590 and 5743-48 of 1995, a similar view has been taken by the Karnataka High Court following the decision rendered by the Madras High Court. The Karnataka High Court has held Section 171(9) of the Income Tax Act, 1961 as unconstitutional and also declared Section 20-A of the Wealth Tax Act, 1957 which is substantially similar to Section 171(9) of the Income Tax Act as void being violative of Article 14 of the Constitution. The Gujarat High Court has rejected the income tax applications filed before it for raising and referring the following

question :

> "Whether on the facts and in the circumstances of the case and in 'law, the Tribunal was right in coming to the conclusion that share income from the firm to the two smaller HUFs cannot be clubbed in the hands of bigger HUFS."

5. In the said cases also, the ITO refused to recognise partial partition in view of the provisions of Section 171(9) of the Act and added the share income of two smaller HUFs in the hands of the assessee, the bigger HUF.

6. Since the question involved in all these cases is of the constitutional validity of Section 171(9) of the Income Tax Act, 1961, all these matters were directed to be placed together before the Constitution Bench. Hence, these appeals are disposed of by this common judgment and order.

7. Learned counsel appearing on behalf of the appellant, the Revenue, submitted that the findings given by the High Court are, on the face of it, erroneous. He contended that there is no reason for holding that Section 171(9) suffers from the vice of legislative incompetence or that the prescribed cut-off date as 31-12-1978 is violative of Article 14 of the Constitution of India. The cut-off date is prescribed after taking into consideration the assessment year and is given effect from Assessment Year 1980-81. It is his further submission that those who have partially partitioned HUF properties prior to cut-off date and those who have done it subsequently are both distinct and different classes. As against this, learned counsel for the respondents submitted that the reasons recorded by the High Court for holding sub-section (9) to be invalid do not call for any interference.

8. Before appreciating the contentions raised by the learned counsel for the parties, it will be necessary to refer to the relevant part of Section 171 of the Act which is as under :

> "171. (1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and insofar as a finding of partition has been given under this section in respect of the Hindu undivided family.
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> (2) Where, at the time of making an assessment under Section 143 or Section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the assessing officer shall make an enquiry thereinto after giving notice of the enquiry to all the members of the family.
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> (3) On the completion of the enquiry, the assessing officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.
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> # (4)-(8) * * * ##
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> (9) Notwithstanding anything contained in the foregoing provisions of this section, where a partial partition has taken place after the 31st day of December, 1978 among the members of a Hindu undivided family hitherto assessed as undivided, -
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> (a) no claim that such partial partition has taken place shall be enquired into under sub-section (2) and no finding shall be recorded under sub-section (3) that such

partial partition had taken place and any finding recorded under sub-section (3) to that effect whether before or after the 18th day of June, 1980, being the date of introduction of the Finance (No. 2) Bill, 1980, shall be null and void;

(b) such family shall continue to be liable to be assessed under this Act, as if no such partial partition had taken place;

(c) each member or group of members of such family immediately before such partial partition and the family shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the family in respect of any period, whether before or after such partial partition;

(d) the several liability of any member or group of members aforesaid shall be computed according to the portion of the joint family property allotted to him or it at such partial partition,

and the provisions of this Act shall apply accordingly.

Explanation. - * * *

9. From the aforesaid section, it is clear that for the purposes of income tax, the concept of partial partition of HUF was recognised, but is done away with by the amendment which specifically provides that where a partial partition has taken place after 31-12-1978 no claim of such partial partition having taken place shall be enquired into under sub-section (2) and no finding shall be recorded under sub-section (3) that such partial partition has taken place. If any such finding is recorded under sub-section (3) whether before or after 18-6-1980 being the date of introduction of Finance Bill (No. 2) 1980, the same shall be null and void. The effect of the aforesaid sub-section is that for the purposes of income tax partial partitions taking place on or after 1-1-1979 are not to be recognised. If a partial partition has taken place after the cut-off date no enquiry as contemplated under sub-section (2) by the Income Tax Officer shall be held. Even if the enquiry is completed and the finding is given, it would be treated as null and void. In this view of the matter, the contention raised in some of the petitions by the learned counsel for the respondents that partial partition took place on 13-4-1979 and that in the assessment year it was recognised and the benefit was given to the assessee, has no significance in view of the crystal clear language used in the sub-section that partial partition taking place after the cut-off date is not to be enquired into and if enquired into the findings would be null and void. Such a family is to be assessed under the Act as if no partial partition has taken place.

10. The next question is whether the amendment to the aforesaid section can be said to be in any way beyond the legislative competence. In our view, it is difficult to comprehend that the said amendment can be termed as beyond legislative competence. Parliament has the authority to delete or amend any provision of the Income Tax Act and it cannot be said that it is beyond legislative competence. The legislative competence is to be decided on the basis of the Constitution that empowers the legislature to levy taxes on income. The relevant Item 82 of List I of the Seventh Schedule to the Constitution empowers Parliament to enact the legislation for imposition of taxes on income other than agricultural income. Further, the concept of partial partition of HUF was not recognised under the Income Tax Act, 1922 and was recognised only under the Income Tax Act, 1961. All that is done by the amendment is to restore the status quo ante that prevailed prior to the 1961 Act. It is for the legislature to decide whether the recognition of partial partition introduced in

the Income Tax Act should continue or not. If it considers that it has led to abuses or inconvenience, it is entitled to amend or delete. As per the object and reasons of the amending Act, it was introduced because multiple Hindu undivided families were created by effecting partial partitions as regards persons constituting the joint family or as regards the properties belonging to the joint family or both, which resulted in tax reduction or evasion and with a view to curbing this creation of multiple Hindu undivided families by making partial partitions, it was proposed to derecognise partial partitions of HUF effected after 31-12-1978 for tax purposes. By having multiple partial partitions qua the properties of the members, it is possible to manipulate the affairs of HUF for reduction of tax liability and to prevent such manipulation, sub-section (9) is added. Hence, it would be difficult to hold that addition of sub-section 171(9) is beyond the legislative competence.

11. Further in case of Balaji v. ITO ((1961) 43 ITR 393 : AIR 1962 SC 123) a similar contention was considered by this Court and it was held that it is settled law that entries in the lists are not powers but are only fields of legislation and Entry 82 can sustain law made to prevent the evasion of tax. The Court dealt with the validity of Section 16(3)(a)(i) and (ii) of the Income Tax Act, 1922 which provided that for computing the total income of any individual for the purpose of assessment, the shares in the profits of the firm received by the wife and/or minor children shall be included in the total income of the individual if he is the partner of the said firm. The Court held that sub-section (3)(a)(i) and (ii) was enacted for preventing evasion of tax and was well within the competence of the Federal Legislature. On the question of legislative competence, the Court referred to an earlier decision in the case of Sardar Baldev Singh v. CIT ((1960) 40 ITR 605 : AIR 1961 SC 736) and held as under :

> "'So Entry 54 (Government of India Act, 1935) 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 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 Court also dealt with the question of constitutional validity on the ground of violation of the doctrine of equality and negatived the contention that the legislature ought to have classified genuine and non-genuine cases of partnership by holding that demarcating a group any further, by sub-classification as genuine and non-genuine partnerships, might defeat the purpose of the Act. The Court observed as under :

> "This mode of taxation may be a little hard on a husband or a father in the case of genuine partnership with wife or minor children, but that is offset, to a large extent, by the beneficent results that flow therefrom to the public, namely, the prevention of evasion of income tax, and also by the fact that, by and large, the additional payment of tax made on the income of the wife or the minor children will ultimately be borne by them in the final accounting between them."

12. The next ground is with regard to violation of Article 14. The amendment is brought with effect from 1-4-1980 and is to apply in relation to Assessment Years 1980-81 and thereafter. It is true that two distinct classes are created - one of families having partial partition which has taken place prior to the cut-off date and the other of partial partition taking place after the cut-off date. Benefit which is conferred upon those assessees who have partially partitioned their property prior to the cut-off

date is not withdrawn and others who partitioned their property after the cut-off date would not get the same, but that would hardly be a ground for holding it as violative of Article 14. It is settled law that differentiation is not always discriminatory. If there is a rational nexus on the basis of which differentiation has been made with the object sought to be achieved by particular provision, then such differentiation is not discriminatory and does not violate the principles of Article 14 of the Constitution. This principle is too well settled now to be reiterated by reference to cases. Further, whether the same result or a better result could have been achieved and a better basis of differentiation could have been evolved is within the domain of the legislature and must be left to its wisdom. In the present case, there is intelligible basis for differentiation and the classification is having a rational nexus of achieving the object of preventing the creation of further multiple Hindu undivided families for reduction of tax liabilities. Further, for the validity of the section, it is not necessary for the legislature to withdraw the benefit which is already conferred.

13. Secondly, the cut-off date of 31-12-1978 cannot be said to be arbitrary. The amending Bill was introduced in June 1980 and is given effect to from Assessment Year 1980-81. It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances; while fixing a line, a point is necessary and there is no mathematical or logical way of fixing it; precisely, the decision of the legislature or its delegate must be accepted unless it is very wide off the reasonable mark. (University Grants Commission v. Sadhana Chaudhary ((1996) 10 SCC 536 : 1996 SCC (L&S) 1431).) The learned counsel for the respondent was not in a position to point out any ground for holding that the said date is capricious or whimsical in the circumstances of the case. In this view of the matter, the finding given by the High Court that there is no valid basis of justification for treating a Hindu undivided family separately in a hostile manner with reference to the date, i.e., 31-12-1978, is on the face of it erroneous.

14. The next reason given by the High Court is that it entrenches upon the charging provisions in Sections 4 and 5 of the Income Tax Act and purports to charge the income which does not belong to HUF to be assessed in the hands of HUF. Hence, it enlarges the scope of Sections 4 and 5 of the Act. In our view, this reason is also devoid of any substance because the charging Sections 4 and 5 are to be read with the definition of the word 11 person" given in the Act, that is, the tax is to be charged in respect of the total income of the previous year of every person. The word "person" is given the meaning in Section 2(31) which, inter alia, includes a Hindu undivided family. It is open to the legislature to give a different meaning to the word "person" for the purpose of the Act which may or may not include HUF or such other legal entities. In such a situation, it is open to HUF to take the benefit of the Act as available or to partition HUF as a whole. It is to be stated that even prior to the amendment, all partial partitions were not recognised under the Act. Partial partition which was only in accordance with the Explanation was recognised. Further, prior to the Income Tax Act, 1961, there was no question of recognising partial partition and the relevant provision under the Income Tax Act, 1922 was Section 25-A. After considering the various decisions, this Court in the case of Kalloomal Tapeswari Prasad (HUF) v. CIT ((1982) 1 SCC 447 : 1982 SCC (Tax) 73 : (1982) 133 ITR 690) held that the substance of the decisions in Kalwa Devadattam v. Union of India ((1963) 49 ITR 165 : AIR 1964 SC 880), in ITO v. A. Thimmayya ((1965) 55 ITR 666 : AIR 1965 SC 1238) and in Jt. Family of Udayan Chinubhai v. CIT ((1967) 63 ITRE 416 : AIR 1967 SC 762) was that under Section 25-A of the 1922 Act a Hindu undivided family which had been assessed to tax could be treated as undivided and subjected to tax under the Act in that status unless and until an order was made under Section 25-A(1); if in the course of the assessment proceedings it is claimed by any of the members of the Hindu undivided family that there has been a total partition of the family property resulting in physical division thereof as it was capable of, the

assessing authority should hold an enquiry and decide whether there had been such a partition or not; if he held that such a partition had taken place, he should proceed to make an assessment of the total income of the family as if no partition had taken place and then proceed to apportion the liability as stated in Section 25-A amongst the individual members of the family. If no claim was made or if the claim where it was made was disallowed after enquiry, the Hindu undivided family would continue to be liable to be assessed as such. This was the legal position under the 1922 Act. The Court further held as under : (SCC p. 459, para 17)

> "17. ... Hindu law does not require that the property must in every case be partitioned by metes and bounds or physically into different portions to complete a partition. Disruption of status can be brought about by any of the modes referred to above and it is open to the parties to enjoy their share of property as tenants-in-common in any manner known to law according to their desire. But the income tax law introduces certain conditions of its own to give effect to the partition under Section 171 of the Act."

The Court also held : (SCC p. 460, para 19)

> "If a transaction does not satisfy the above additional conditions it cannot be treated as a partition under the Act even though under Hindu law there has been a partition - total or partial. The consequence will be that the undivided family will be continued to be assessed as such by reason of sub-section (1) of Section 171."

15. From the aforesaid decisions, it is clear that prior to the Income Tax Act, 1961, there was no question of recognising partial partition. Even with regard to total partition, it was required to satisfy all the conditions prescribed in Section 25-A and an order was required to be passed for that purpose under Section 25-A(1). If the claim of partition was disallowed after enquiry, HUF was liable to be assessed as such. After the new Act, partial partition was not recognised unless it satisfied the conditions laid down in the Explanation. Therefore, the contention that sub-section (9) entrenches upon the charging provisions in Sections 4 and 5 of the Act is without any basis.

16. The aforesaid case of Kalloomal ((1982) 1 SCC 447 : 1982 SCC (Tax) 73 : (1982) 133 ITR 690) was relied upon in the case of ITO v. N. K. Sarada Thampatty ((1991) Supp (2) SCC 737 : (1991) 187 ITR 696) and the Court observed that in considering the factum of partition for the purpose of amendment, it is not permissible to ignore the special meaning assigned to "partition" under the explanation to Section 171 even if the partition is to be effected by a decree of the court. The legislature has assigned special meaning to the word "partition" under the explanation which is different from the general principles of Hindu law and it contains the deeming provision under which partition of the property of HUF could be accepted.

17. In this view of the matter, it cannot be held that by addition of sub-section (9), the scope of Sections 4 and 5 of the Act is enlarged and, therefore, it is beyond legislative competence.

18. The learned counsel for the respondent, inter alia, submitted that :

> (1) Such a drastic and sweeping provision was arbitrary and excessive and was not at all necessary to prevent the abuse of partial partition as a tax avoidance tool.
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> (2) Partial partition can be for absolute, genuine and bona fide need and if it was not genuine or for bona fide need as per the explanation, it was not recognised.

Therefore, there was no necessity of amending the Act.

(3) Once there is a partial partition and if it is not recognised, the income received from the partitioned assets would be taxable in the hands of HUF at a significantly higher rate of tax than the rate applicable to the separated member.

(4) Under the provisions of the Act, HUF can be liable to pay the tax without having control over the assets which are partitioned.

(5) Considering this hardship and inequities resulting from Section 171(9), the Court has rightly held the provisions to be arbitrary and violative of Article 14 of the Constitution.

19. In our view, the aforesaid submissions are without any substance and similar contentions are dealt with and rejected by this Court in the cases mentioned above. (Sardar Baldev Singh ((1960) 40 ITR 605 : AIR 1961 SC 736) and Balaji ((1961) 43 ITR 393 : AIR 1962 SC 123.) It is for the legislature to recognise or not to recognise partial partition of HUF property for the purpose of levy and collection of tax; it is also for the legislature to decide whether only non-bona fide partial partition undertaken for reducing the tax liability should not be recognised or not to recognise all partial partitions of HUF properties. Further, the consideration of hardship is totally irrelevant for deciding the question of legislative competence. In the case of taxation, it is settled law that hardship or equity has no role to play in determining eligibility (sic exigibility) to tax and it is for the legislature to determine the same. Lastly, once the partial partition is not recognised, tax is to be calculated as if the assets are held by HUF. Hence, the question whether HUF is required to recover tax from the person to whom the properties are allotted is not required to be considered by the taxing authority as for the purpose of income tax the properties belong to HUF. If HUF finds any hardship, it is for the members of HUF to have the partition of the entire estate and not to have partial partition. Therefore, there is no substance in the contentions raised by the learned counsel for the respondent.

20. In this view of the matter, the aforesaid appeals are allowed. The judgments and orders holding Section 171(9) of the Income Tax Act, 1961 and Section 20-A of the Wealth Tax Act, 1957 as unconstitutional are quashed and set aside. The writ petitions filed by the respondents as mentioned above before the Madras High Court and the Karnataka High Court challenging the validity of Section 171(9) of the Income Tax Act an for consequential reliefs are dismissed. The orders of the Gujarat High Court rejecting applications under Section 256(2) of the Income Tax Act, 1961 are also set aside and in the said matters, the Income Tax Appellate Tribunal, Ahmedabad shall refer the questions to the High Court for determination.

21. Ordered accordingly.

22. No order as to costs.