

A. Loganathan and Others Vs. A. Loganathan and Others

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Court : Chennai

Decided On : Dec-14-1993

Reported in : [1995]214ITR202(Mad)

Judge : Venkataswami, J.

Acts : Income-tax Act, 1961 - Sections 4, 10(1), 66 and 110; [Constitution of India](#) - Article 226

Appeal No. : Writ Petitions Nos. 324 to 331 of 1980 and 4564 to 4568 of 1980

Appellant : A. Loganathan and Others

Respondent : A. Loganathan and Others

Advocate for Def. : N.V. Balasubramaniam, Adv.

Advocate for Pet/Ap. : M. Krishnakumar, Adv.

Judgement :

Venkataswami, J.

1. The common prayer in all these writ petitions is for the issue of a writ of declaration, declaring that section 2(2) of the Finance Act, 1977, is ultra vires and illegal.

2. Though different assesseees have filed these petitions, the respondents are common and arguments addressed by both sides were also common. Hence, these petitions are disposed of by this common order.

3. The points raised in the affidavit filed in support of these cases are identical and as a sample, the grounds raised in Writ Petition No. 324 of 1980 alone need be looked into. Paragraphs Nos. 12, 14 and 16 of the affidavit read as follows :

'12. It is submitted that the pith and substance of the Finance Act is to levy tax on agricultural income. This has been made clear from the Finance Minister's Budget Speech for 1973-74 reported in : [1973]88ITR39(Ker) . The provision for aggregation of agricultural income with non-agricultural income was introduced by the Finance Act, 1973, and it appears from the Finance Minister's Budget Speech for 1973-74 that the object of the aggregation was in effect to tax the agricultural income. The Finance Minister stated as follows in his Budget Speech :

'As Honourable Members are no doubt aware, the Committee on Taxation of Agricultural Wealth and Income has suggested several measures for mobilisation of resources from the agricultural sector. One of their principal recommendations is that agricultural income should be taken into account in determining the rate of tax applicable to non-agricultural income. This will help to reduce sharp disparities in the tax burden on person with similar income. I consider this recommendation of the Committee to be well-conceived, and am accepting it. I am, therefore, making provision in the budget for aggregation of both the agricultural and non-agricultural components of a taxpayer's income for purpose of determining the rates of income-tax that will apply to the non-agricultural portion in cases where the taxpayer has non-agricultural income exceeding the exemption limit. For the purpose of determining the rate of income-tax applicable to the non-agricultural portion of a taxpayer's income, the first 5,000 rupees of his non-agricultural income will be appropriated to the lowest slab, which is exempt from tax. The agriculture income will be appropriated to the middle slabs, and the balance of the non-agricultural income will be appropriated to the upper slabs of the aggregate income. This scheme partial integration will apply to the case of individuals, Hindu undivided families, unregistered firms, association of persons, bodies of

individuals, and artificial juridical persons.' (underlined by me to indicate the emphasis)

14. It is submitted that total income has been defined in the charging section of the Income-tax Act, 1961, and the same meaning has been given to the terms in the Finance Act. Agricultural income has not been contemplated as an item to be included in the total income in the definition of the charging section, and that, therefore, it cannot be taken into account as aggregate as if it were comprised in the total income. It is submitted that agricultural income is not income at all contemplated for the purpose of levy of tax under the Income-tax Act, 1961 (vide section 10(1) of the Income-tax Act, 1961), and consequently cannot be treated as income or even deemed to be income as forming part of the total income even for rate purposes.

It is respectfully submitted that section 2(2) in so far as it enables the respondents to include in my total income agricultural income resulting in a higher tax is clearly ultra vires and beyond the powers of Parliament. The provisions of the Finance Act, 1977, are also opposed to the provisions of the Income-tax Act, 1961. The agricultural income has already been taxed by the State Legislature and, therefore, treating it as if it were my total income will amount to subjecting the same income to tax again. This double taxation of the same income is the very thing that is sought to be avoided by article 246 of the [Constitution of India](#). Therefore, by aggregating the agricultural income with my total income Parliament has gone beyond its powers set out in article 246 of the [Constitution of India](#).'

4. Identical points for different financial years were considered by the Division Bench judgments of the Kerala High Court and the Karnataka High Court in K. J. Joseph v. ITO : [1980]121ITR178(Ker) and K. V. Abdulla v. ITO : [1986]161ITR589(KAR) . Both the High Courts have repelled identical contentions raised before them and upheld the validity of identical provisions. The learned judges of the Kerala High Court held as follows (headnote) :

'Section 4 of the Income-tax Act read with section 10(1) shows that agricultural income is excluded from the charge of income-tax. Wherever any income is excluded from chargeability to tax, the exclusion operates in the computation of

the total income for the purpose of liability to tax and also for the purpose of determination of the rate of tax. However, this rule would apply only if there are no provisions to the contrary. The provisions of the Finance Acts of 1973 and 1974 make such specific provisions and this rule would not render the provisions invalid. Income-tax is a tax on income of the previous year and it would not cover something which is not the income of the previous year or made fictionally so. However, there is nothing to prevent the Legislature from fixing the rate and from permitting the rate to fluctuate in relation to some outside factor but the rate must be applied to the total income under the income-tax Act and the tax that an assessee had to pay must be at a rate in respect of the total income. The Finance Acts of 1973 and 1974 by legislative fiction deem agricultural income to be part of total income for the limited purpose of working out the rate of tax. The impugned provisions do not outrun the embankments provided by sections 4, 66 and 110 of the Income-tax Act and the scheme of the provisions for the computation of tax.

It is well-established that in considering the true nature and character of a legislation the pith and substance of the legislation must be taken into account. If on the view of the statute as a whole the substance of the legislation is within the express powers of the Legislature then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not, under the guise of dealing with one matter, in fact, encroach upon the forbidden field. However, the impugned provisions in pith and substance are within the legislative competence of Parliament under entry 82 of List I of the Seventh Schedule to the Constitution and, therefore, valid.

The charge of tax is still on non-agricultural income. No part of the agricultural income is subjected to tax. For the purposes of determining the rate at which non-agricultural income is to be taxed, the agricultural income is taken into account. Such taking into account and the differential rates are based on the different sources of income available to the persons concerned. It is only in respect of persons who have agricultural income in addition to non-agricultural income that the mode of computation of the rate of tax as provided by the impugned provisions is adopted. This classification is reasonable and based on intelligible differentia. It is not unconnected with the objects of the taxing statute.

Therefore, the contentions raised against the validity of sections 2(6), 2(7)(e) and Part IV of the First Schedule to the Finance Act, 1973, and sections 2(2), 2(7)(b)(ii), 2(8)(e) and Part IV of the First Schedule to the Finance Act, 1974, must be rejected and the petitions dismissed.'

5. The learned judges of the Division Bench of the Karnataka High Court (see : [1986]161ITR589(KAR)), while repelling identical contentions, held as follows (headnote) :

'A State Legislature has the competence to enact law with respect to entry 46 in List II of Schedule VII providing for levy of tax on agricultural income and Parliament has the competence to enact a law with respect to entry 82 in List I of Schedule VII providing for levy of tax on income other than agricultural income. The disability of Parliament because of entry 46 in List II of Schedule VII is in the matter of levying tax on agricultural income. In enacting a law for levying tax under entry 82, in List I, Parliament must necessarily have all the incidental or ancillary powers, so long as the law so enacted does not transgress the forbidden field. Therefore, notwithstanding the disability referred to above, Parliament may, for the purpose of computing the total income of an assessee, include his agricultural income but such inclusion for the aforesaid purpose should not affect the non-liability of the agricultural income of the assessee for income-tax. Parliament may, therefore, make a law under entry 82 in List I of the Seventh Schedule providing that for the computation of income of an assessee, his agricultural income also should be taken into account subject, however, that such inclusion would not subject the agricultural income to tax under the Act. The constitutional validity of the provisions of section 2(2) of the Finance Act, 1976, providing for aggregation of 'agricultural income' with 'net income' for taxing only the 'net income', under the Act, is, therefore, unassailable.

Assessees with agricultural income are financially in a better position than the assessees without agricultural income. The provisions of the Finance Act selects assessees with agricultural income because of the belief of Parliament that capacity to pay tax increases with the increase in the income. The purpose of classification is to subject the assessees with agricultural income who are in a

position of economic superiority to a higher rate of tax on their 'net income' only. Making the burden of tax on the net income heavier in proportion to the increase in the agricultural income cannot be said to be unreasonable. An assessee with agricultural income occupies a position of economic superiority by reason of his larger income and to make his tax liability heavier is not arbitrary but is only an attempt to proportion the payment to capacity to pay and then arrive, in the end, at a more genuine equality. Assesseees with agricultural income form a class by themselves.

Therefore, the provisions of the Finance Act, 1976, relating to aggregation of agricultural income with total income for rate purposes are not unconstitutional and do not violate articles 14 and 19 of the Constitution. The provisions are within the legislative competence of Parliament.'

6. As I am in respectful agreement with the views expressed by the above Division Bench judgments, I need not once again repeat the same while upholding the constitutional validity of section 2(2) of the Finance Act, 1977. Applying the ratios laid down in the above two Division Bench judgments, I hold that the provisions impugned in these writ petitions is well within the legislative competence of Parliament and accordingly the writ petitions fail and are dismissed. However, there will be no order as to costs.