Electronics Corporation Of India Ltd vs Secretary,Revenue ... on 5 May, 1999

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Bench: S.P.Bharucha, B.N.Kirpal, S.Rajendra Babu, S.S.M.Quadri, M.B.Shah

CASE NO.:
Appeal (civil) 142 of 1983

PETITIONER:
ELECTRONICS CORPORATION OF INDIA LTD.

RESPONDENT:
SECRETARY,REVENUE DEPARTMENT,GOVT.OF ANDHRA PRADESH AND ORS.

DATE OF JUDGMENT: 05/05/1999

BENCH:
S.P.BHARUCHA & B.N.KIRPAL & S.RAJENDRA BABU & S.S.M.QUADRI & M.B.SHAH

JUDGMENT:

JUDGMENT DELIVERED BY:

S.P.BHARUCHA,J.

S.P.BHARUCHA, J. :

Under challenge is the principal judgment and order dated 30th July, 1982 of the High Court of Andhra Pradesh in the case of Electronics Corporation of India Ltd. (Civil Appeal No.142 of 1983) and the orders following the principal judgment and order in the cases of M/s. Parel Investment and Trading Co. Limited (Civil Appeal No.3937-38 of 1990) and Hindustan Shipyard Ltd. (Civil Appeal Nos.3939-41 of 1990 and 3393 of 1991).

It is enough to set out the facts pertaining to Civil Appeal No.142 of 1983 filed by the Electronics Corporation of India Ltd. (the appellant company) in as much as the same issue of law is involved in all the appeals and all the appellants are companies registered under the Companies Act.

The Andhra Pradesh Non Agricultural Lands Assessment Act, 1963 (the Act) defined owner to include any person for the time being receiving or entitled to receive whether on his own account or as agent, or trustee, guardian, manager, receiver for another person or for any religious, educational or charitable purpose, rent or profits

from the non agricultural land or for the structure constructed on such land, in respect of which the word is used. Consequent upon amending Act 28 of 1974, with effect from 1st July, 1974, the definition of owner was amended and the following, so far as is relevant here, was added: and also includes in respect of the land owned by the State Government or the Central Government (i) the lessee, if the land has been leased out by that Government for any commercial, industrial or other non agricultural purpose ..... Section 3 is the charging section of the Act and provides for the levy of assessment on non agricultural land, to be paid by the owner of such land. Section 12 of the Act sets out the categories of land to which the Act does not apply. Prior to amending Act 28 of 1974, the Act did not apply to land owned by the State Government or the Central Government. Thereafter, it did not apply to land owned by the State Government or the Central Government other than (i) the land leased out for any commercial, industrial or other non agricultural purpose .....

In 1963 the State of Andhra Pradesh had granted a large area of land to the Department of Atomic Energy of the Central Government. In 1964 the Department of Atomic Energy gave 220.25 acres (the said land) thereout to the appellant company. On 1st October, 1978, the first respondent issued to the appellant company notices of demand for non-agricultural assessment on the said land under the Act. For the period 1970-71 to 1973-74 the sum demanded was Rs.1,91,189.68. For the period 1974-75 to 1978-79 the sum demanded was Rs.11,98,826.32.

The appellant company filed a writ petition in the High Court of Andhra Pradesh impugning the said notices of demand. The contention of the appellant company in the writ petition, as set out in the judgment and order under appeal, was that it was the lessee of the said land which belonged to the Union of India and, since the property of the Union of India could not, by virtue of Article 285 of the Constitution, be taxed by a State legislature, the Act did not apply to the said land and, accordingly, no demand thereunder could be made upon the petitioner, which is a lessee of the Union of India. It is stated that an area of approximately 1,000 acres was granted by the State Government to the Department of Atomic Energy, Government of India, and that the Department of Atomic Energy, in turn, leased out an extent of 280.25 acres to the petitioner corporation for establishing its plant and machinery. It is further contended that out of the extent granted to the petitioner an extent of 29 acres is covered by buildings, an extent of 12 acres by roads, and the rest of the area is meant for future expansion. It is also submitted that an extent of 14.25 acres is being used for agricultural purposes.

The response on behalf of the State Government to the writ petition was contained in an affidavit made by N. Janakiramulu. The tenor of the affidavit was that the Act had been amended by Act 28 of 1974 and that, thereby, the appellant company had become liable to pay non agricultural assessment upon the said land.

> The High Court, by the principal judgment and order (which is reported in AIR 1983 AP 239), held that Article 285 was not attracted and that the State Government was entitled to levy and collect the non agricultural assessment from the appellant company so long as it continued to be a lessee of the Central Government in respect of the said land. It clarified that the assessment could be levied only upon land which was actually used for any of the specified purpose, namely, commercial, industrial or any other non-agricultural purpose, including residential purpose.

What extent of the said land was so used and what was the appropriate rate applicable was a matter for the assessing authority to decide. The appellant company was permitted to file an appeal to the appellate authority under the Act against the impugned demands, wherein it would be open to the appellant company to establish the actual extent of land used for the aforesaid purposes. The applicable rate could also be ascertained in such appeal.

It is against the principal judgment and order that all the appeals are really directed.

The first submission of Mr. Adhyaru, counsel for the appellant company, was that, in fact, the appellant company was not a lessee of the Union of India in respect of the said land and that there was no lease in its favour. The submission is quite the reverse of the case of the appellant company in its writ petition. It is, therefore, an impermissible submission, and we indicated to learned counsel when he made it that we declined to entertain it.

Article 285(1) of the Constitution of India, upon which reliance has been placed by the learned counsel for the appellant company, reads thus :

> 285(1) The property of the Union shall, save in so far as Parliament may by law otherwise provides, be exempt from all taxes imposed by a State or by any authority within a State.
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> In learned counsels submission, the property of the appellant company was the property of the Union of India in as much as the appellant company was a Government company, its shares being wholly owned by the Union of India. The said land was, therefore, the property of the Union of India and the legislature of the State of Andhra Pradesh was barred by the provisions of Article 285 from imposing any tax, including non-agricultural assessment, on the property of the Union of India. Learned counsel supported the submission by reference to Article 265, which provides that no tax shall be levied or collected except by authority of law, and to Article 366(28), which says that taxation includes the imposition of any tax or impost, whether general or local or special, and tax shall be construed accordingly.
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> Learned counsel then referred to Article 289 which deals with the exemption of property and income of a State from Union taxation and reads thus :
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> 289(1) The property and income of a State shall be exempt from Union taxation.

> (2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.
>
> (3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

Our attention was drawn by learned counsel to the judgment of this Court on Article 289, namely, New Delhi Municipal Council vs. State of Punjab & Ors. 1997(7) SCC

339. In construing Article 289, reference was made to Article 285 and it was said in the majority judgment that Article 285 imposed a ban, which was absolute and emphatic and there was no way in which a State Legislature could levy a tax upon the property of the Union of India. Article 289 was different by reason of clauses 2 and 3 thereof.

In the next case cited by learned counsel, namely, Air India Statutory Corporation & Ors. vs. United Labour Union & Ors., 1997(9) SCC 377, this Court was dealing with which was the appropriate Government in relation to an establishment pertaining to an industry carried on by or under authority of the Central Government and it was held that the statutory corporation, Air India, was such a industry and the appropriate Government for the purposes of the Contract Labour (Regulation and Abolition) Act, 1970, was the Central Government. Reliance was placed by learned counsel upon the propositions enunciated in paragraph 26 of the majority judgment, thus:

> (1) The constitution of the corporation or instrumentality or agency or corporation aggregate or corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.
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> (2) If it is a statutory corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.

In our view, neither has Article 285 any application to these appeals nor are we concerned with whether or not the appellants are controlled by or under the authority of the Central Government.

With effect from 1st July, 1974, Section 12 of the Act was amended so that it now applied to land which was owned by the Central or a State Government and was leased out for any commercial, industrial or other non-agricultural purpose. With effect from that date, by reason of the amendment of Section 2(j), an owner included a lessee of land owned by the Central or a State Government if the land was leased out by such Government for a commercial, industrial or other

non- agricultural purpose. By virtue of Section 3, the obligation to pay non-agricultural assessment on the leased land lay upon the owner lessee.

It is the case of the appellant company in its writ petition that it is the lessee of the Department of Atomic Energy of the Union of India in respect of the said land. The said land, therefore, is of the ownership of the Central Government and, being leased out to the appellant company for an industrial and commercial purpose, is land to which the Act applies. By virtue of the amended definition of owner under Section 2(j) of the Act, the appellant company is the owner of the said land and, by virtue of Section 3, is liable to pay non-agricultural assessment thereon.

A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.

In Western Coalfields Limited vs. Special Area Development Authority, Korba & Anr., 1982(1) SCC 125, this Court reviewed earlier judgments on the point. It held that even though the entire share capital of the appellant before it had been subscribed by the Government of India, it could not be predicated that the appellant itself was owned by the Government of India. Companies, it was said, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and the buildings in question in that matter were vested in and owned by the appellant. The Government of India only owned the share capital.

In Rustom Cavasjee Cooper vs. Union of India, 1970(1) SCC 248, it was held, A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the company is not the property of the shareholders. A shareholder has merely an interest in the company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the distributed profit.

In Heavy Engineering Mazdoor Union vs. State of Bihar, 1969(1) SCC 765, this Court held that an incorporated company has a separate existence and the law recognises it as a juristic person, separate and distinct from its members.

We are, in the premises, left in no doubt that the State Government was entitled to levy non-agricultural assessment upon the said land and recover it from the appellant company.

Learned counsel then submitted that, in any event, the recovery of non agricultural assessment in respect of the said land could not have been effected from the appellant company by reason of the application of the principle of promissory estoppel. In this behalf he referred to a letter dated 7th February, 1967 addressed by the Under Secretary to the Government of India to the Secretary of the Government of Andhra Pradesh, Industries Department, in regard to the transfer of land to the Department of Atomic Energy for the location of the Electronics Plant and other plants. The letter stated that it had been agreed by the State Government that this land would be exempt from the levy of tax under the Act irrespective of whether the plants are managed departmentally or through a

Public Section Undertaking. The letter requested that notifications exempting the lands already handed over to the Department of Atomic Energy or to be handed over in future from levy of tax under Andhra Pradesh Act 14 of 1963, while vesting in the Department of Atomic Energy or in public sector projects would also require to be issued. The issuance of the same was, therefore, requested. In reply, the Deputy Secretary of the Government of Andhra Pradesh, Industries Department, stated on 17th October, 1967 that no separate notification is required exempting the land given to the Atomic Energy Department for establishment of Atomic Energy Complex at Hyderabad from payment of non-agricultural assessment under the A.P. Non- Agricultural Assessment Act so long as the units are run by the Government of India in Public Sector. It was contended by learned counsel that the appellant company had acted upon this promise. Accordingly, the State Government was bound by its promise and was estopped from going back upon it.

There are two short answers to this contention. In the first place, there can be no estoppel against a statute. In the second place, the letter dated 17th October, 1967 needs to be carefully read. It says that no notification was required for exempting the land from payment of non-agricultural assessment so long as the units are run by the Government of India in Public Sector. The appellant company is a separate and distinct legal entity that runs its own industry. The letter dated 17th October, 1967 cannot be read as promising exemption to companies, though their shares be held wholly by the Union of India.

Mr. Dholakia, learned counsel for M/s. Parel Investment and Trading Co. Limited (appellant in Civil Appeal Nos.3937-38 of 1990), adopted the submissions aforementioned. He submitted that Article 285 was intended to protect public revenues; the shares of the appellant companies being fully owned by the Central Government, their funds were public revenues. It was, therefore, necessary to read down the provisions of Section 2(j) and Section 12 of the Act to exclude therefrom all but private owners and lessees of land. The question of reading down comes in if it is found that these provisions are ultra vires as they stand. We have held that these provisions are not ultra vires because Article 285 does not apply when the property that is to be taxed is not of the Union of India but of a distinct and separate legal entity. Each of the appellants being companies registered under Companies Act, they are entities other than the Union of India. The question of reading down does not, therefore, arise.

The discussion so far relates to demands for non-agricultural assessment subsequent to 12th July 1974, when the amendments made by Act 28 of 1974 in the Act came into effect. The defence to the writ petition filed by the appellant company was, as we have already stated, exclusively based upon the amendments made by Act 28 of 1974 in the Act. These amendments have no retrospective effect. No demand for non-agricultural assessment could, therefore, have been made upon the appellant companies for any period prior to 12th July, 1974. To this extent, the demands are quashed.

In regard to demands for non-agricultural assessment subsequent to 12th July, 1974, which are upheld, the appellant companies shall be at liberty to file appeals within 8 weeks from the date of this order, wherein it will be open to them to establish the actual extent of the land that was used at the relevant time for commercial, industrial or other non-agricultural purposes. Only upon such land can non-agricultural assessment be levied. What the applicable rate should be can also be

canvassed and decided in such appeals.

To the extent aforestated, the appeals succeed and are allowed. Orders on the appeals accordingly. No order as to costs.