Karnataka High Court
M. Nagappa And Ors. vs Income-Tax Officer, Central ... on 18 September, 1979
Equivalent citations: 1980 123 ITR 501 KAR, 1980 123 ITR 501 Karn
Author: R Jois
Bench: M S Iyengar, M R Jois
JUDGMENT Rama Jois, J.

1. These twenty-two writ appeals have been presented by the appellants against the common judgment in Writ Petition No 992 of 1972, and connected writ petitions, made by a single judge dismissing the writ petitions rejecting their prayer for striking down s. 217 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), on the ground that it is violative of art. 14 of the Constitution.

2. The brief facts which gave rise to the writ petitions out of which these appeals arise are these : The appellants, who are parents in the firm of contractors called, M/s. M. Nagappa, were not assessees to income-tax under the Act prior to 1965-66. They became assessee for the years 1965-66, 1966-67 and 1968-69. While passing the assessment orders the ITO found that the appellants were liable to pay advance tax in accordance with the provisions of the Act. Hence he levied interest on the amount of advance tax withheld, as prescribed in s. 217 of the Act. Their petitions claiming exemption from interest made to the Commissioner were rejected. Aggrieved by the levy of interest, the appellants presented writ petitions challenging the constitutional validity of s. 217 of the Act on the ground that it is discriminatory, and, therefore, void as it offends art. 14 of the Constitution. Their plea was that persons, who are similarly situated and to whom notices calling upon them to pay advance tax under s. 210 of the Act are issued are not liable to pay any interest, even if they do not pay advance tax in terms of the notice, whereas persons like the appellants, who are new assesses, are made liable to pay interest at 12 per cent on the advance tax withheld and, therefore, s. 217 of the Act is violative of art. 14 of the Constitution.

3. The respondents resisted the case of the appellants on the following grounds : Persons, who are already assesses and to whom notices for payment of advance tax under s. 210 of the Act are issued and persons like the appellants who became assesses for the first time belong to two separate and distinct classes. The appellants, therefore, cannot claim similar treatment. Moreover, defaulters in payment of advance tax, in spite of sending notices under s. 210 of the Act, are liable to the imposition of penalty under s. 221 of the Act, though not liable to pay interest, and the new assesses, who are liable to pay interest under s. 217, are not liable to penalty under s. 221, as they do not answer the description of defaulters in terms of s. 218 if the Act. Therefore, s. 217 is not violative of art. 14 of the Constitution.

4. The learned single judge repelled the contention of the appellants holding that the appellants belong to a separate class, vis-a-vis, assesses to whom notices are issued under s. 210 of the Act and the classification is reasonable and differential treatment is not discriminatory.

5. Sri. K. Srinivasan, learned counsel for the appellants and Sri S. R. Rajasekhara Murthy, learned counsel for the respondents, addressed arguments in support of their respective cases.

6. We shall, in the first instance, briefly set out the scheme of the Act is so far as it relates to the collection of advance tax. Section 207 makes the payment of advance tax in accordance with the provision of ss. 208 to 219 obligatory. Section 208 provides that every person having an income more than the income specified in that section is liable to pay advance tax during the financial year. Section 209 prescribed the procedure for computation of advance tax payable. Provision relating to the requirement of issue of notice and liability for non-payment in time, are as under :

(i) 210. - Provides for issue of a notice to a person, who is already an assessee to pay advance tax specifying the instalments of advance tax. There is no provision providing for payment of interest, on the amount of advance tax even if it is not paid within the time specified.

(ii) 212. - This section enables an assessee to whom a notice under section 210 has been issued to file a revised estimate of his income, if it were to be lower and pay advance tax if payable accordingly and also makes it obligatory for filing a revised estimate if income is going to be higher by 33 1/3 % or more than the amount of advance tax demanded, and to pay accordingly.

(iii) 215. - According to this section, if advance tax payable by an assessee is not paid, or even if paid, if it is less than the 75% of the assessed tax, he is liable to pay 12% interest on the amount by which the advance tax so paid falls short of assessed tax.

(iv) 216. - Under this section, an assessee is made liable to pay interest on the advance tax withheld if he had made an underestimate of his income.

(v) 217. - This section applies to new assesses. According to this section, a person who becomes an assessee for the first time and who though liable to pay advance tax under the Act had failed to pay the same, as required under the Act, is liable to pay interest at 12% per annum on the amount not paid.

(vi) 218. - This section says that the assessee who fails pay advance tax in accordance with the notice issued under s. 210 or according to his estimate filed under s. 212, shall be deemed to be a defaulter in respect of instalments not paid.

(vii) 221. - This section provides for imposition of penalty, against a defaulter, in any amount, not exceeding the amount of tax in arrears.

7. The contention urged for the appellants is that though every person, who fails to pay advance tax, is made liable to pay interest, on the ground withheld, an assessee to whom notice under s. 210 has been issued and who has not filed thereafter any revised estimates of his income and who fails to pay the advance tax, is not liable to pay any interest on the amount not paid and this is a clear discrimination in favour of persons falling within s. 210 and against all other income-tax payers.

8. In this case we shall, as was done by the learned single judge in the writ petitions, confine the examination of the cases of the appellants with reference to the assesses falling under s. 210 of the Act. The appellants in these cases are all persons, who had filed their returns for the first time.

Hence they are all covered by s. 217 of the Act. According to the said section, they are required to pay interest at the rate of twelve per cent. per annum from the 1st day of April next following the financial year, in which advance tax was payable up to the date of regular assessment. In respect of assesses to whom advance tax notices are issued under s. 210 and who had not filed estimates of their income under s. 212 of the Act, there was no provision after the commencement of the Act till s. 209A was introduced with effect from June 1, 1978, for payment of interest. Therefore, the question for consideration is whether the absence of a provision requiring the payment of interest by a defaulter in payment of advance tax falling in the aforesaid category, if sufficient to declare s. 217 of the Act which requires new assesses like the appellants to pay interest at the prescribed rate as void as offending art. 14 of the Constitution.

9. At this stage, it is necessary to refer, briefly, the guidelines laid down by the Supreme Court for testing the validity of a law when called in question on the ground that it is violative of art. 14 of the Constitution.

10. The guidelines are -

I

(i) Article 14 forbids class legislation, but does not forbid reasonable classification of persons or things for purposes of legislation.

(ii) In order to pass the test of permissible classification -

(a) Classification must be reasonable, in that it should be founded on intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group.

(b) Such a classification must have nexus to the object sought to be achieved. (See Ram Krishna Dalmia v. Justice Tendolkar-).

II

(i) Taxation laws cannot claim immunity from the equality clause of the Constitution. Therefore, taxation statute cannot be arbitrary and oppressive.

(ii) Court cannot however meticulously scrutinise the impact of the burden of a tax law on different persons or interests but can only strike down if the court is convinced that the method adopted is arbitrary or capricious, fanciful or clearly unjust.

(iii) If Legislature has adopted one method for imposition of tax burden, the court cannot strike down the law on the ground that the Legislature should have adopted another method which, in the opinion of the court, is more reasonable. (Khandige Sham Bhat v. Agrl. ITO-(1963) 48 ITR (SC) 21).

III

(i) In view of the instrinsic complexity of fiscal adjustments of diverse elements, there is considerably wide discretion in the matter of classification for taxation purposes.

(ii) If the classification by a taxing statute is a reasonable one, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some income or objects and not others. (ITO v. N. Taken Roy Rymbai- ].

11. The validity or otherwise of the impugned provision has to be decided by applying the aforesaid principles enunciated by the Supreme Court. This classification of persons liable to pay advance income-tax under the Act into following two categories, viz. :

(i) Those who are already assesses and liable to pay advance tax and to whom advance tax notice is issuable and issued under s. 210 of the Act; and

(ii) those who have not become assessee, but are liable to pay advance tax, is clearly an intelligible classification. This is also clear from the fact that as against assesses not paying advance tax even after receiving notice under s. 210, recovery proceedings could be taken straightaway as they are treated as defaulters, but no such action is possible in the case of persons, though liable to pay advance tax, but who are not yet assessed even once. In view of this classification, Legislature was entitled to treat these classes differently in the matter of imposing additional liability over and above the advance tax liable to be paid. It is well settled that every differentiation is not discrimination. So long as a differentiation is founded on a rational classification having reasonable nexus to the object sought to be achieved by legislation, it does not infringe the right of equality guaranteed under art. 14.

12. That the classification is reasonable is not also controverted by the learned counsel for the appellants. However, he contended as follows :

Even if the classification is considered reasonable, in order to pass the test of art. 14 there must be nexus to the object sought to be achieved. He argued that the object of levy of interest on the withheld advance tax, is only to compensate the State for delayed payment. Therefore, whether a person is already an assessee, to whom notice of advance tax has been issue under s. 210 or a person is not an assessee, should make no difference, so long as both are liable to pay advance tax in time. There is no justification to levy interest on the latter only and not to levy interest on the former.

13. If the classification is a reasonable one it follows that a claim for similar treatment is not tenable and it is open for the Legislature to treat them differently, though it was possible to treat them similarly, unless it is established that there is absolutely no justification to treat them differently having regard to the object sought to be achieved. Viewed from this light, it may be seen that an assessee to whom notice calling upon him to pay advance tax is issued under s. 210, but who fails to pay it within the stipulated time, is deemed to be a defaulter under s. 218 of the Act. Not only coercive action for recovery of advance tax could be taken immediately against him, but also he is liable to the imposition of penalty, which may go to the extent of the advance tax payable itself. The said section has no application to persons like the appellants, who are governed by s. 217 of the Act

which requires an additional payment of interest at 12% per annum on the amount of advance tax withheld. The Legislature has imposed additional burden on both the classes of persons in a different way. Whether the Legislature should have levied interest only on both or penalty may on both, or interest on one category and penalty on the other is a matter for legislative wisdom and judgment and could not constitute a ground for striking down the provision so long as the additional burden is imposed on both in one way or the other.

14. Learned counsel for the appellants, however, strenuously contended that the levy of interest under s. 217 and levy of penalty under s. 221, on an assessee, who is a defaulter in payment of advance tax has nothing to do with each other and, therefore, the former cannot be taken as the basis to hold that art. 14 is not violated. In this behalf, he submitted as follows :

(i) Under s. 18A of the 1922 Act both classes of persons were liable to pay interest and a defaulter in payment of advance tax after notice was liable to penalty in addition to payment of interest.

(ii) Under the 1961 Act, while a defaulter in payment of advance tax filling under s. 210 is not at all liable to pay interest only person like appellants, who are governed by s. 217 are liable to pay interest.

(iii) Interest is compensatory in charter and penalty is penal in charter. (See Nagappa v. ITO ). Therefore, penalty imposable under s. 221 cannot be taken into account to hold that there is no discrimination in levying interest on persons coming within the provision of s. 217 and not levying interest on persons coming within the provision of s. 210 of the Act.

15. It is no doubt true that interest is compensatory in charter and penalty is penal in charter. It is also true that assesses who were served with advance tax notices and who failed to pay advance tax were liable to pay interest in addition to penalty like fresh assesses, but under the 1961 Act the defaulters in payment of advance tax even after receiving notice under s. 210 were not made liable to pay interest till June 1, 1978, when s. 209A was added. This circumstance, however, is insufficient to strike down s. 217 on the ground of violation of art. 14, as the two categories of persons fall into two separate classes and the classification is a reasonable one. Whether the law imposes interest or penalty for non-payment of advance tax, by doing so the law imposes an additional burden on the person concerned over and above tax payable. As to what method or methods should have been adopted by the Legislature in imposing additional burden on these two separate and distinct classes of persona was well within the legislative judgment and just because interest and penalty was imposed on defaulters-assessee who were served with advance tax notices, and interest only on new assessees under the 1922 Act and that under 1961 Act only penalty was imposed on the former and interest only on the latter could not, in our opinion, constitute sufficient basis to strike down s. 217 of the Act on the ground that it is discriminatory.

16. In the circumstances, it appears to us that while, the argument constructed for the assesses, on the basis of omission to levy interest on the amount of advance tax omitted to be paid by an assessee falling under s. 210, and the levy of interest on the amount of advance tax omitted to be paid by the new assessees appears to be attractive at the first sight, on a deeper scrutiny, we are convinced that

there is no violation of art. 14 of the Constitution. Therefore, the view taken by the learned single judge is correct and the appeals are liable to be dismissed.

17. Before concluding it is necessary to refer to another argument constructed on the basis of sub-r. (5) of r. 40 of the I. T. Rules. We see absolutely no force in this contention. The said sub-rule only empowers the IAC to reduce the interest leviable under the Act, if in his opinion there are good grounds to do so in a genuine case. This is a provision favourable to the appellants and other assessees. But the argument was that as there are no guidelines for the exercise of the power under that sub-rule, levy of 12% interest under s. 217 becomes violate of art. 14. We fail to see that there is any vice in sub-r. (5) of r. 40. On the other hand, it is favourable to assessees, as they have the opportunity of getting the interest reduced. Further no provision of an enactment could be struck down n the ground that a rule framed thereunder is violative of any constitutional provision. If any rule is found to be ultra vires, only the rule can be struck down and not the provision of the Act under which it is framed. Hence, we reject this contention.

18. For the reasons stated above, we make the following order :

(i) The appeal are dismissed.

(ii) No costs.