Supreme Court of India
G. Ekambarappa & Ors vs Excess Profits Tax Officer, ... on 2 May, 1967
Equivalent citations: 1967 AIR 1541, 1967 SCR (3) 864
Author: V Ramaswami
Bench: Ramaswami, V.

PETITIONER:
G. EKAMBARAPPA & ORS.

Vs.

RESPONDENT:
EXCESS PROFITS TAX OFFICER, BELLARY

DATE OF JUDGMENT:
02/05/1967

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1967 AIR 1541 1967 SCR (3) 864
CITATOR INFO :
R 1976 SC 958 (20,21)

ACT:
Adaptation of Laws, Order (No. 3) dated December 31, 1956-Excess Profits Tax Act, 1940 made inapplicable to all areas forming part of a Part B State immediately before November 1, 1956-Whether amounts to 'repeal' of Act in respect of such area-General Clauses Act, s. 6 whether attracted.
General Clauses Act, s. 6(e)-Liability 'accrued or incurred-'Bellary district included in Part B State immediately before November 1, 1956-Notice under Excess Profits Tax Act, s. 15 issued in 1960 in respect of business carried on in said district in 1943-44-Terms of s. 6(e) General Clauses Act whether satisfied-Liability to tax Whether arises at end of chargeable accounting period or when assessment pro-ceedings completed.

HEADNOTE:
The District of Bellary originally belonged to the Part 'A' State of Madras in British India. On October 1. 1953 it merged in the Part 'B' '.State of Mysore. The Excess Profits Act, 1940 applied only to British India. When Bellary District went to the Part 'B' State of Mysore the

Act ceased to apply to it. After the States Reorganisation Act, 1956, Mysore also became a Part 'A' State. But according to s. 1(2) of the Adaptation of Laws (No. 3) Order dated December 31, 1956. the aforesaid Excess Profits Tax Act was to extend "to the whole of India ,except the territories which immediately before November 1, 1956 were comprised in a Part 'B' State." In 1960 the Excess Profits Tax Officer, Bellary gave a notice to the appellants under s. 15 of the Act in respect of the period October 30, 1943 to October 30, 1944. The appellants objected that the Act did not apply to Bellary district as immediately before November 1, 1956 it was in a Part 'B' State. The plea was rejected by the departmental authorities as well as by the High Court in a writ petition under Art. 226 of the Constitution. In appeal. by special leave, to this Court it was contended that so far as Bellary District was concerned it was not a case of repeal but only of non-application of the Act, and thus s. 6 of the General Clauses Act was not attracted. It was further urged that even if s. 6 applied no liability bad accrued or been incurred in terms of cl. (e) of the section as there was no assessment of escaped profits before November 1, 1956 when the adaptation was made.

HELD : (i) The result of the Adaptation of Laws Order 1956 so far as the Act was concerned, was that the provisions of the Act were no longer applicable or in force in Bellary district. To put it differently, the Act was repealed so far as the area of Bellary district was concerned. Repeal of the Act means revocation or abrogation of the Act and s. 6 of the General Clauses Act applies even in the case of a partial repeal, or repeal of part of an Act. [866H; 867A]

(ii)The case was covered by s. 6(e) of the General Clauses Act. The liability of an assessee to tax arises immediately at the end of the chargeable accounting period and not merely at the time when it is quantified. by assessment proceedings. It followed therefore that the

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notice issued under s. 15 of the Act was legally valid and the appellants representing the original partners of the firm continued to be liable to be proceeded against under that section for the profits which had escaped taxation. [867 E-F]

Wallace Brothers & Co. v. Commissioner of Income-tax, 16 I.T.R. 240 (P.C.), Chatturam Horilram Ltd. v. C.I.T ., 27 I.T.R. 709. Kalwa Devaduttam v. Union of India, 49 I.T.R., 165 and State of Kerala V. N. Same lyer, A.I.R. 1966 S.C. 1415, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 185 of 1966.

Appeal by special leave from the judgment and order dated March 20, 1962 of the Mysore High Court in Writ Petition No. 109 of 1960.

A.K. Sen, R. Ganapathy Iyer and R. Gopalakrishnan, for the appellants.

D.Narsaraju, T. A. Ramachandran and R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by special leave, from the judgement of the Mysore High Court dated March 20, 1962 dismissing writ petition No. 109 of 1960. The appellants had prayed therein for the grant of writ for quashing a. notice dated January 16, 1960 issued by the respondent under s. 15 of the Excess Profits Tax Act, 1940 (Act XV of 1940), hereinafter called the 'Act', calling upon the appellants to submit a return of the standard profits and the profits actually made during the chargeable accounting period from October 30, 1943 to October 30, 1944 on the ground that the profits had been under-assessed.

The appellants carried on a business constituting themselves into a partnership called 'Guduthur Thimmappa & Brothers in 1934. On the date of commencement of the business the part- ners were G. Thimmappa, G. Ekambarappa, and G. Padmanabhan, each of the partners representing their respective joint families. The business of the firm was in Bellary town and the partners of the firm were residents of Bellary town during the period the firm was carrying on business. The, firm was dissolved on October 16, 1944. Thimmappa, one of the partners, died on April 13, 1955. For the chargeable accounting period from October 30, 1943 to April 30, 1944, the Excess Profits Tax Officer had taken steps to assess the "escaped" profits of the firm. He issued the necessary notices to G. Padmanabhan and G. Ekambarappa as the partners of the dissolved firm. He also issued notice to G. M. Prabhu and G. Lakshmidevamma as the representatives of G. Thimmappa. The contention of the appellants, before the High Court was that as from November 1, 1956 the Act must be deemed to have been repealed so far as Bellary district is concerned and therefore the respondent was not competent to take any proceedings for determining the escaped income under S. 15 of that Act. The High Court rejected the contention on the ground that, though the Act stood repealed by reason of the inclusion of Bellary district in Mysore State, the liability to pay tax on the escaped profits continued by virtue of s. 6 of the General Clauses Act. The question to be considered in this appeal is whether the appellants continued to be liable to be proceeded against under S. 15 of the Act on the profits which had escaped taxation.

The present Bellary district was a part of the old Madras State which was a Part "A" State under the Constitution of India till its merger with the Mysore State on October 1, 1953 which was a Part "B" State. The Mysore State continued to be a Part "B" State till November 1, 1956. The Act extended, when first promulgated, to. the territory of former British India. After the Constitution came into force, s. 1(2) of the Act was adapted so as to extend the operation of the Act "to the whole of India except Part 'B' States" by the Adaptation of Laws Order, 1950. After the formation of new States in pursuance of the States Reorgani- sation Act, 1956 (Act 37 of 1956), sub-s. (2) of s. 1 of the Act was adapted by the President by Adaptation of Laws (No.

3) Order, 1956 dated December 31, 1956. Section 1(2) of the Act as adapted read as follows :

> "It extends to the whole of India except the territories which immediately before the 1st November, 1956 were comprised in part 'B' state."

The result of the adaptation was that all the provisions of the Act stood repealed so far as the district of Bellary was concerned with effect from December 31, 1956. It was contended on behalf of the appellants that it is not a case of repeal of the Act and so the provisions of s. 6 of the General Clauses Act could not be invoked to sustain the validity of the notices issued by the respondent under S. 15 of the Act. It was argued that so far as the Act was con- cerned, the Adaptation of the Laws Order, 1956 only modified the provisions of s. 1 (2) of the Act and did not repeal the Act as such and the effect of the modification was that the provisions of the Act were no longer applicable to the Bellary district which was comprised in the territory of Part 'B' State of Mysore immediately before November 1, 1956. In our opinion there is no justification for the argument put forward on behalf of the appellants. The result of the Adaptation of Laws Order, 1956 so far as the Act was concerned, was that the provisions of that Act were no longer applicable or in-force in Bellary district. To put it differently, the Act was repealed so far as the area of Bellary 8 6 7 district was concerned. Repeal of an Act means revocation or abrogation of the Act and, in our opinion, s. 6 of the General Clauses Act applies even in the case of a partial repeal or repeal of part of an Act. Section 6 of the General Clauses Act states "Effect of repeal.-Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or Section 3(19) of the General Clauses Act defines an "enactment" as including "a Regulation and also as including any provision contained in any Act or in any such Regulation as aforesaid".

The argument was also stressed on behalf of the appellants that even if s. 6(c) of the General Clauses Act was applicable there was no "liability incurred or accrued" as there was no assessment of escaped profits before November 1, 1956 when the adaptation was made. We do not think there is -any substance in this argument. The liability of the appellants to tax arose immediately at the end of the chargeable accounting period and not merely at the time when it is quantified by assessment proceedings. It follows therefore that the notice issued under s. 15 of the Act was legally valid and the appellants representing the original partners of the firm continued to be liable to be proceeded against under that section for the profits which had escaped taxation. In Wallace Brothers and Co. Ltd. v. Commissioner of income-tax(1), the Judicial Committee expounded in clear terms the scope of a tax liability under the Income-tax Act. It was observed by the Judicial Committee as follows :

> "..... the rate of tax for the year of assessment may be fixed after the close of the previous year and the assessment will necessarily be made after the close of that year. But the liability to tax arises by virtue of the charging section alone, and it arises not later than the close of the previous year, though quantification of the amount payable is postponed."

The same view has been expressed by this Court in Chatturam Horilram Ltd. v. C.I.T. (2) in which the legal position was reviewed (1) 16 I.T.R. 240, 244. (P.C.) (2) 27 I.T.R. 769.

with regard to the question of charge to income-tax. In that case, the assessee-company carrying on business in Chota Nagpur was assessed to tax for the year 1939-40, but the assessment was set aside by the Income-tax Appellate Tribunal on March 28, 1942, on the ground that the Indian Finance Act, 1939, was not in force during the assessment year 1939-40, in Chota Nagpur which was a partially excluded area. On June 30, 1942, a Regulation was promulgated by which the Indian Finance Act of 1939 was brought into force in Chota Nagpur retrospectively as from March 30, 1939. Thereupon the Income-tax Officer made an order holding that the income of the assessee for the year 1939-40 had escaped assessment and issued to the assessee a notice under s. 34 of the Income-tax Act. The validity of the notice was questioned. It was held by th Court that though the Finance Act was not in force in that area in 1939-40, the income of the assessee wasliable to tax in that year and, therefore, it had escapdently of the passing of the Finance Act but until the Finance Act It was pointed out that the income was chargeable to tax independing dently of the passing of the Finance Act but until the Finance Act was passed no tax could be actually levied. The same principle was reiterated by this Court in Kalwa Devadattam v. Union of India(l). The question in that case was whether the liability of a Hindu undivided family arose before or after partition of the family. In that case, this Court speaking through Shah, J. stated in clear terms thus :

> "Under the Indian Income-tax Act liability to pay income-tax arises on the accrual of the income, and not from the computation made by the taxing authorities in the course of assessment proceedings; it arises at a point of time not later than the close of the year of account."

The same view has been taken in a recent case by this Court in State of Kerala v. N. Sami lyer (2) . In view of the principle expressed in these authorities we are of the opinion that the liability to pay excess profits tax accrued immediately at the end of the chargeable accounting period and that liability was preserved under s. 6 (c) of the General Clauses Act even though the Act stood repealed so far as Bellary district was concerned with effect from November 1, 1956.

Mr. Narsaraju contended in the alternative that on the combined operation of S. 53 of the Andhra Pradesh Act (Act 30 of 1953) and s' 119 of the State Reorganisation Act (Act 37 of 1956) all the provisions of the Excess Profits Tax Act, 1940 remained in operation in Bellary district in spite of the Adaptation of Laws Order, 1956. Section 53 of the Andhra Pradesh Act states as follows:

(1) 49 I.T.R. 165.

(2) A.I.R. 1966 S.C. 1415.

8 69 .lm15 "The provisions of Part 11 shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Madras or of Mysore shall, until otherwise provided by a competent Legislature or other competent authority, continue to have the same

meaning. "

.lmo Section 119 of the State Reorganisation Act reads as follows "The provisions of Part It shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

Section 120 of this Act states :

"For the purpose of facilitating the application of any law in relation to any of the States formed or territorially altered by the provisions of Part II, the appropriate Government may, before the expiration of one year from the appointed day, by order make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. Explanation.-In this section, the expression "appropriate Government" means-

(a) as respect any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law,-

(i) in its application to a Part A State, the State Government, and

(ii) in its application to a Part C State, the Central Government."

it was pointed out that the Act was in force in Bellary district When the Constitution came into force and the effect of s. 53 of the Andhra Pradesh Act was to continue the operation of that Act so far as Bellary district was concerned. The effect of s. 119 of the State Reorganisation Act was to preserve the territorial operation of the law which was immediately in force before the date of the promulgation of that Act until such law was repealed by the competent legislature or a competent legislative authority. There is great force in. the argument advanced by Mr. Narsaraju on this point. But it is not necessary for us to express any concluded opinion on this aspect of the case because we have -already given reasons for holding that the appeal must be dismissed on the ground that the Act stood repealed by reason of the Adaptation of Laws Order, 1956 and the liability to pay tax on escaped profits continued under s. 6 of the General Clauses Act.

We accordingly affirm the judgment of the Mysore High Court dated March 20, 1962 and dismiss this appeal with costs.

G.C. Appeal dismissed.