LAW COMMISSION OF INDIA

FORTY-NINTH REPORT

ON

THE PROPOSAL FOR INCLUSION OF AGRICULTURAL INCOME IN THE TOTAL INCOME FOR THE PURPOSE OF DETERMINING THE RATE OF TAX UNDER THE INCOME-TAX ACT, 1961

AUGUST, 1972

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE

CHAIRMAN,
LAW COMMISSION,
'A' Wing, 7th Floor,
Shastri Bhavan,
New Delhi-1.

August 28, 1972.

Shri H. R. Gokhale,
Minister of Law and Justice,
New Delhi.

MY DEAR MINISTER,

I am forwarding herewith the Forty-ninth Report of the Law Commission on the proposal for inclusion of agricultural income in the total income for the purpose of determining the rate of tax under the Income-tax Act, 1961.

2. The circumstances under which this question came to be considered by the Commission and the scope of the Report have been explained in the first paragraph of the Report. After the subject was taken up, a preliminary study was made, and a draft Report on the subject prepared. The draft Report was discussed, and revised in accordance with the conclusions reached by the Commission, and finalised.

3. As you are aware, the reference to the Commission was made at the instance of the Committee on Taxation of Agricultural Income and Wealth. As that Committee made a request that the Report of this Commission should be given urgently and as the nature of the subject matter also required that it should be kept confidential, no press communique was issued for inviting views on the subject.

4. I am sending an extra copy of the Report to you, to enable you to forward it to the Chairman of the above mentioned Committee.

With kind regards,

Yours sincerely,

P. B. GAJENDRAGADKAR.

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Introductory.

1. This Report is concerned with a question of importance to the national economy, involving a constitutional issue of some difficulty, and it has arisen out of a reference made by the Union Government[1] at the instance of the Committee on the Taxation of Agricultural Wealth and Income. One of the proposals which the Committee referred to above had under contemplation, was to the effect that for the purpose of determining the rate of income-tax under the (Central) Income-tax Act, 1961, the agricultural income of the assessee should be taken into account. This proposal had been made in the context of the need to remove various deficiencies of the existing system, namely,—(i) the inequity arising at present by the fact that the rates of agricultural income-tax vary from State to State, so that persons with the same income have to pay different amounts of tax, depending on the source of income, and (ii) the evasion of income-tax by assessees who show their non-agricultural income as agricultural income, thereby evading the tax legitimately payable on non-agricultural income.

Broadly stated, the proposal is that it should be permissible for Parliament to provide that for the purpose of calculating the rate of income-tax on non-agricultural income, the agricultural income of an assessee should be included in his total income. Once the rate is so determined, the rate will be applied *only* to the non-agricultural income of the assessee. The question which we have been asked to consider is[2], whether this can be done under the present constitutional provisions, or whether an amendment of the Constitution will be required, and if so what should be the lines on which the constitutional amendment should be made.

Scope of the Report and

2. It should be made clear at the outset that the scope of the present Report is limited. The Report is not concerned with

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1. Letter of the Law Minister to the Chairman, Law Commission, dated 9th August, 1972.

2. As to the precise questions, *see* paragraph 2, *infra*.

questions for consideration.

the merits of the proposal referred to above,[1] nor with the details of the legislation which will have to be undertaken to give legislative effect to the scheme of taxation which would be made permissible by the proposal. To be precise, the questions which we consider in this Report are:—

(1) Whether under the Constitution, as it stands now, it is permissible for Parliament to amend the Income-tax Act, 1961, to provide that "total income" as defined in that Act will include "agricultural income" *for the purpose of computing the rate of tax though no tax will be levied by the Centre on* agricultural income.

(2) If the answer to the first question is in the negative, on what lines the Constitution would need to be amended to secure for the Parliament, without abridging the taxation powers of the State legislatures in respect of agricultural income, a limited power to legislate only for the aggregation of agricultural income with income on which tax is leviable under the Central Income-tax Act for the purpose of determining the appropriate rate of tax on non-agricultural income.

Constitutional provisions as to income-tax— Matters within competence of the Union.

3. For a consideration of the first question,[2] it is necessary to deal with the relevant provisions of the Constitution.

"Agricultural income", as defined by the Constitution,[3] means agricultural income as defined for the purposes of the enactments relating to Indian income-tax. The Income-tax Act[4] has an elaborate definition of "agricultural income", but it is not necessary to quote it here. Taxes on income other than agricultural income are within the exclusive competence of Parliament,[5] and Parliament has also[6] the residuary power of taxation, *i.e.*, the power to levy any tax not mentioned in the State or the Concurrent List.

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1. Paragraph 1, *supra*.
2. Paragraph 2, *supra*.
3. Article 366(1) of the Constitution. *Also see* article 274.
4. Section 2(1), Income-tax Act, 1961. *Also see* section 145.
5. Constitution, Union List, entry 82.
6. *Ibid.*, entry 97.

Taxes on income other than agricultural income are, under the scheme of distribution of revenues between the Union and the States,[1] to be levied and collected by the Government of India and distributed between the Union and the States, in the manner provided in article 270(2). For this purpose, "taxes on income" does not include a Corporation tax.[2]

Parliament has a power to impose surcharge on certain taxes, including a surcharge on the tax on income other than agricultural income.[3]

Constitutional provisions as to income-tax—Matters within the competence of States.

4. While the above provisions are strictly confined to a tax on income other than agricultural income, there is, as regards tax on agricultural income, a specific entry,[4] assigning to the States the power to legislate on "Taxes on agricultural income". There is also,[5] in the State List, an entry relating to land revenue, which, however, is not very material for the present purpose.

Dichotomy between Agricultural income and other income.

5. It is thus obvious that there is, in the constitutional scheme, a rigid dichotomy between agricultural income and other income, for the purpose of taxation. This dichotomy has, in legislative practice in India also, a very long history, and it is axiomatic that agricultural income cannot be taxed by the Centre.

When the income-tax was levied in India in 1860, income was taxable[6] under four schedules, *viz.*, (1) income from landed property, which included income from land (agricultural income) and from house property; (2) income from Professions and Trades; (3) income from Securities (annuities and dividends included); and (4) income from Salaries and Pensions. But, since 1886, agricultural income has been excluded.

The whole question now is, whether the proposal to take into account agricultural income for the *limited purpose of determining* the rate of tax would change the character of the

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1. Constitution, Article 270(1).
2. *Ibid.*, Article 270(4)(a).
3. Article 271.
4. Constitution, State List, entry 46.
5. *Ibid.*, entry 45.
6. O. P. Chawla, "Development of the concept of Income under the Indian Income-tax Laws" (1968) 22 Bulletin for International Fiscal Documentation, 341, 342.

tax and take it on the other side of the dichotomy, or whether the tax will still remain on this side of the dichotomy, that is to say, within the competence of the Union.

Effect of the proposal on the character of tax.

6. It may be argued that the proposal in question would amount to levying a tax on agricultural income though in an indirect form; and *prima facie* the argument may appear plausible. But, on a close examination of the problem, we have come to conclusion that this argument is not well-founded or sound. We shall deal with the possible arguments on both the sides, in due course.

Distinction between taxable income and rate of tax.

7. We must, first, refer to the abstract proposition that there is a distinction between income (or, for that matter, any other subject matter), on which tax is levied (on the one hand), and the rate of tax (on the other hand). In legislative practice in the field of income-tax, the distinction is well known. For example, the tax is on the total income[1] of the assessee, but the assessee is entitled to a deduction from tax in respect of interest on certain securities declared income-tax free.[2] Such interest is included in the total income of the assessee. But the assessee is entitled to a "deduction from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated on the amount so included, at the average rate of income-tax or at the rate of twenty-seven and a half per cent, whichever is less".

The expression "average rate of income-tax" is defined[3] as meaning the rate arrived at by dividing the amount of income-tax calculated on the total income by such total income.

True, the income for which the above provision is made, is undoubtedly within the taxing power of the Union, and there is no doubt that the Union can tax it fully, if it so chooses. But we are citing this example only to illustrate the abstract proposition mentioned at the opening of this paragraph.

Inclusion for purpose of rate a mere question of method.

8. In our view, the inclusion of agricultural income within the scope of total income *for the limited purpose of computing the rate of tax,* is only a method of computation of tax, and

1. Section 4, Income-tax Act, 1961.
2. Section 86-A, *ibid.*
3. Section 2(11), *ibid.*

does not amount to the levying of a tax on the income so included. What is constitutionally pertinent is the power to tax *and not the manner of* its exercise.

Legislation how far authorised by enumerated Powers—Tests applied.

9. The essential problem of judicial review, under a written constitutional system where powers are distributed by reference to the subject matter, does sometimes present considerable difficulty. For the purpose of considering whether particular legislation is authorised by one or more of the enumerated powers, several tests have been applied. But these tests, though worded differently, yield substantially the same result. For example, it is stated that in considering the validity of any provision adopted in the supposed exercise of a limited power of legislative nature, the first and often the most decisive step is to ascertain the true scope of the measure impugned and the legal effect of its provisions. Again, the "pith and substance" doctrine had been evolved by the Privy Council as a necessary consequence of the double enumeration of powers, frequently overlapping, in the Canadian Constitution.

10. It has also been stated[1] that in every case, "the true nature and character of the legislation.....its ground and design and the primary matter dealt with its object and scope" are to be determined.[2]

Pith and substance of proposed legislation.

11. We think that the pith and substance of the proposed legislation or its true scope, or true nature and character, falls within "tax on income other than agricultural income". The taxable corpus under the proposal will continue to be non-agricultural income as heretofore.

In the judgment upholding the Gift-tax Act, the Supreme Court held,[3] that Parliament had power to impose gift-tax on lands and buildings. The pith and substance of the Gift-tax Act was to place the tax on the gift on property, which may include lands and buildings. It is not a tax imposed directly upon lands and buildings, but is a tax upon the value of the total gifts made in an year which is above the exempted limit.

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1. *Russel* v. *The Queen* (1882) 7 App. Cas., 829, 838-40.

2. Other cases are reviewed by Bailey in 25 Australian Law Journal at page 332.

3. *Second Gift Tax Officer* v. *Magarata*, (1971) 1 S.C.J. 1, 4, paragraph 11.

There is no tax upon lands or buildings as units of taxation. The value of the lands and buildings is only the measure of the value of the gift. Somewhat similar reasoning could apply in the present context. There is no tax upon agricultural income. The unit of tax is other income. The taxation of agriculture was, in an academic discussion,[1] defined to include:—

(*a*) taxation of agricultural land;
(*b*) taxation of agricultural produce; and
(*c*) taxation of income from agricultural land.

The present proposal falls within none of the above three categories.

Merely because the amount of agricultural income becomes relevant in determining the rate, it cannot be regarded as an essential element of the tax, for the tax still remains a tax on the non-agricultural income.

Position under the proposal different from countries levying tax on agricultural income.

11-A. The position under the proposal will be essentially different from the position that prevails in some countries (including a few federations),[2] where agricultural income is brought within the direct purview of the law imposing a tax on income.[3]

For example, in Uruguay[4] (which has a quasi-federal constitution), income is, for the purposes of the individual income-tax, classified in five categories, according to the "prevailing factor of production", and these categories are:—

I—"Real Estate Category" (income derived from the lease of real estate and similar situations).

II—"Chattel" (interest and other income derived from credits, intangible assets, royalties etc.).

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1. Conference on Agricultural Taxation and Economic Development, Harvard Law School, (1954), page 289.

2. (*a*) Tax on Trade Guide—Chile (Arthur Anderson & Co. Chicago, U.S.A.) (1966);
(*b*) Raynard M. Sommerfield, Tax Reform and the Alliance of Progress (University of Texas Press, Austin);
(*c*) Highlights of Taxation in Mexico (Arthur Anderson & Co. Chicago) (1962).

3. *See* V. P. Gandhi, "Taxation of Agricultural Income unde Central Income-tax" (January to March, 1969) 24 Indian Journal of Agricultural Economics 29, 36, 37, 38.

4. Costa & Rosello, "Taxation in Uruguay" (1968) 22 Bulletin of International Fiscal Documentation 291, 295.

III—"Industry and Commerce" (income from commercial and industrial activities).

IV—"Agriculture" (income from agricultural activities).

V—"Personal" (salaries and fees earned by employees, professional men, etc.).

The prevailing factor of production in categories I and II is capital; in category V work; and in categories III and IV the union of both the elements.

Again for example, in Chile,[1] income derived from real estate (*urban or agricultural*), investments (except dividends), commercial, industrial or similar activities, is taxed under the first category of income-tax.

Rules as to interpretation of legislative entries.

12. Of the rules which apply to the interpretation of the legislative entries, it is relevant to draw attention to the rule of pith and substance;[2] to the rule that each entry is to be interpreted liberally;[3] and to the rule that a power to make law conferred by an entry includes all incidental and ancillary powers.

Wide interpretation.

13. The principle of broad interpretation of the entry conferring a power[4] has been followed in a number of cases concerning various taxes.

By way of example, we may refer to judicial decisions relating to:—

(*i*) excise duty and sales tax;[5-6]

(*ii*) income-tax[7]; and

(*iii*) tax on goods and passengers, carried by road or internal waterways.[8]

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1. Ehrique Piedra, "Taxation in Chile" (1968) 22 Bulletin of International Fiscal Documentation 319, 320.
2. Paragraph 10, *supra*.
3. (*a*) *Baldev Singh* v. *C.I.T.*, A.I.R. 1961 S.C. 736;
   (*b*) *Balaji* v. *I.T.O.*, A.I.R. 1962 S.C. 123.
4. Paragraph 12, *supra*.
5. *Chhotabhai Jethabhai Patel* v. *Union of India*, A.I.R. 1962 S.C. 1006.
6. (*a*) *Sundaramiar & Co.* v. *State of Andhra Pradesh*, A.I.R. 1958 S.C. 468;
   (*b*) *J. K. Jute Mills Co.* v. *State of U.P.*, A.I.R. 1961 S.C. 1534.
7. *See* paragraph 16, *infra*.
8. *See* paragraph 19 to 20, *infra*.

Competence to devise machinery.

14. Another important consideration which should be borne in mind is that of enforcement. A legislature levying a tax is competent to devise a machinery for preventing its evasion, and to make provision for recovery and effective collection of the tax in question and for preventing its evasion.[1]

This is on the principle that so long as the character of the tax is not lost, an entry delineating a legislative field has to be widely and liberally construed, provided there is a reasonable nexus between the item taxed and the field so delineated.[2]

Cases relating to the entry "income" and other laws.

15. The principle,[3] which is of general application, has been applied in several cases relating to the entry conferring on Parliament the power to tax income (other than agricultural income) and other entries relating to tax.

Construction placed on the expression "income".

16. For example a wide construction has been placed on the exprssion "income" (in the Union List, entry 82), so as to enable the legislature to provide, by law, for the prevention of evasion of income-tax. [4-5-6-7]

Thus, the validity of section 23A, Income-tax Act, 1922, which provided for super tax on the undistributed income of certain companies,[8] has been upheld.[9]

The validity of sections 2(6-A) (e) and 12(1-B) of the Income-tax Act, 1922, treating as a "dividend" any payment by a company, (not being a company in which the public was substantially interested), of any sum by way of advance or loan[10] was upheld. The provision was designed to prevent evasion of Income-tax.

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1. *See* paragraph 15, *infra.*
2. (*a*) *Punjab D. Industries* v. *I.T. Commr.*, A.I.R. 1965 S.C. 1862;
   (*b*) *Navnit Lal* v. *App. Asst. Commr.*, A.I.R. 1965 S.C. 1375.
3. Paragraph 14, *supra.*
4. *Navnit Lal* v. *A.A.S.*, A.I.R. 1965 S.C. 1375, 1376; (1965) 1 S.C.R. 909.
5. *Balaji* v. I.T.O., A.I.R. 1962 S.C. 123, 125, 126; (1962) 2 S.C.R. 983.
6. *Baldeo Singh* v. *C.I.T.*, A.I.R. 1961 S.C. 736, 743; (1961) 1 S.C.R. 482.
7. *C. K. Devarajulu* v. *I.T.C.* A.I.R. 1963 Mad. 183, 185, Paragraph 8-9
8. *Baldeo Singh* v. *I.T.C.*, A.I.R. 1961 S.C. 736.
9. Section 23-A has been replaced with some changes by sections 104—109, Income-tax Act, 1961.
10. (*a*) *Navnit Lal* v. *Appellate Assistant Commissioner*, A.I.R. 1965 S.C. 1375;
    (*b*) *Punjab Distilling Industries Ltd.* v. *C.I.T.* Punjab, A.I.R. 1965 S.C. 1865.

Power to take into account other income included in power to tax.

17. In our view, the power of the Union to tax non-agricultural income includes the power *to take into account agricultural income for the purpose of determining the rate of tax,* if it is found to be necessary for the efficient exercise of that power.

It has been stated that[1] to the extent the present exclusion of the agricultural income has acted as a loophole in the existing central income-tax, it has provided an avenue for unaccounted money with its undesirable economic effects on the economy. It has further been stated that[2] "there is scope for unaccounted money masquerading as agricultural income". The proposal could, to a certain extent, reduce the effect of unaccounted money derived from non-agricultural income masquerading as agricultural income.

Judicial decisions as to enforcement.

18. It would be convenient to refer, at this stage, to a few other judicial decisions which are relevant to the question of interpretation of the taxing power, and, in particular, to the competence of the legislature concerned to choose the appropriate machinery for enforcement. Many of these relate to taxes on the transport of passengers and goods.

Atiabari case.

19. The following discussion in the *Atiabari case*[3] is pertinent :—

> 'Having thus disposed of the main ground of attack against the constitutionality of the Act based on Article 301 of the Constitution, it is necessary to advert to the other contentions raised on behalf of the appellants. It has been contended that the Act is beyond the legislative competence of the Assam Legislature. We have, therefore, to address ourselves to the question whether or not it is covered by any of the entries in List II of the Seventh Schedule. Entry 56, in its very terms, "Taxes on goods and passengers carried by rail or on inland waterways," completely covers the impugned Act. There is no occasion in this case to take recourse to the doctrine of pith and substance, inasmuch as the Act is a simple piece of taxing statute meant to tax transport of goods, in this case jute and tea, by road or on inland waterways. In my opinion, it is a very simple case

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1. V. P. Gandhi, Some Aspects of India's Tax Structure, (1970), page 172.

2. S. Bhoothalingam, Final Report on Rationalisation and simplification of the tax structure, (1968), (Ministry of Finance, 1968), page 48.

3. *Atiabari Tea Co.* v. *State of Assam,* A.I.R. 1961 S.C. 232, 243, para 20.

of taxation completely covered by entry 56, but the argument against the competence of the Assam Legislature has been sought to be supported by the subsidiary contention that though in form it is a tax on the transport of goods within the terms of entry 56, in substance it is an imposition of excise duty within the meaning of entry 84 in List I of the Seventh Schedule, but, in my opinion, there is no substance *in this contention for the simple reason that so long as jute or tea is not sought to be transported from one place to another, within the State or outside the State, no tax is sought to be levied by the Act.* It is only when those goods are put on a motor truck or a boat or a steamer or other modes of transport contemplated by the Act, that the occasion for the payment of tax arises. A similar argument was advanced in the case of *Tata Iron and Steel and Co. Ltd.* v. *State of Bihar*,[1] and Das, C.J., delivering the majority judgment of the Court, disposed of the argument that the tax in that case was not on sale of goods, but was, in substance, a duty of excise, in these terms :

This argument, however, overlooks the fact that under clause (ii) the producer or manufacturer became liable to pay the tax not because he produced or manufactured the goods, but because he sold the goods. In other words the tax was laid on the producer or manufacturer only qua seller and not qua manufacturer or producer as pointed out in *Province of Madras* v. *Boddu Paidanna and Sons.*[2] In the words of their Lordships of the Judicial Committee in *Governor-General* v. *Province of Madras*,[3] a duty of excise is primarily a duty levied on a manufacturer or producer in respect of the commodity manufactured or produced. It is a tax on goods not on sales or the proceeds of sale of goods. If the goods produced or manufuctured in Bihar were destroyed by fire before sale the manufacturer or producer would not have been liable to pay any tax under s. 4(1)

1, *Tata Iron and Steel Co. Ltd.*, v. *State of Bihar*, (1958) S.C.R. 1355; A.I.R. 1958, S.C. 452.

2. *Province of Madras* v. *Boddu Paidanna and Sons*, A.I.R. 1942 F.C. 33; (1942) F.C.R. 90.

3. *Governor-General* v. *Province of Madras*, A.I.R. 1945 P.C. 98, 101.

read with s. 2(g), second proviso. As Gwyer, C.J., said *in Boddu Paidanna's case*, the manufacturer or producer would be "liable, if at all, to a sales tax because he sells and not because he manufactures or produces; and he would be free from liability if he chose to give away everything which came from his factory."

The observations quoted above completely cover the present controversy. The Legislature has chosen the dealer or the producer as the convenient agency for collection of the tax imposed by section 3, but the occasion for the imposition of the tax is not the production or the dealing, but the transport of those goods. It must, therefore, be held that the Act does what it sets out to do, namely, to impose a tax on goods carried by road or on inland waterways.'

Khyberbari case.

20. Another case illustrating the proposition that it is open to the Legislature to prescribe the machinery for recovering the tax may be usefully referred to. It has been held[1] that a tax levied by a State on goods carried, even though the tax has been made payable by the producer of goods and not by the carrier, is valid. The Supreme Court refused to read, in the State List, entry 56, any restriction to the effect that the tax on goods carried should be levied only *against the owner of the goods* that are carried or against the *persons who carry them.*

Rai Ramkrishna case.

21. As was observed in a case[2] relating to the Bihar Taxation on Passengers etc. Act, while discussing the question whether certain provisions violated the test of reasonableness—

"The objects to be taxed so long as they happen to be within the legislative competence of the Legislature can be taxed by the Legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied,

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1. *Khyberbari Tea Co.* v. *State of Assam*, A.I.R. 1964 S.C. 925.

2. *Rai Ramkrishna* v. *State of Bihar*, A.I.R. 1963 S.C. 1667, 1673, paragraph 12.

the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Article 19, Courts would naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts, would be justified in striking down the impugned statute as unconstitutional. In such case, the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the Legislature for achieving its confiscatory pruposes. This is illustrated by the decision of this Court in the case of *Munnathat Thatunnai Moonil Nair* v. *State of Kerala,* A.I.R. 1961 S.C. 552 where a taxing statute was struck down because it suffered from several fatal infirmities. On the other hand, we may refer to the case of *Jagannath Baksh Singh* v. *State of Uttar Pradesh,*[1] where a challenge to the taxing statute on the ground that its provisions were unreasonable was rejected and it was observed that unless the infirmities in the impugned statute were of such a serious nature as to justify its description as a colourable exercise of legislative power the Court would uphold a taxing statute."

Srinivasan's case.

21-A. The principle of the Supreme Court decision which emphasised[2] the aspect of evasion was reaffirmed by the Supreme Court in a subsequent case,[3] holding that the provision in the Income-tax Act for tagging of income arising to a wife or a minor child from a partnership in which the husband or father is also a partner, was justified mainly on the consideration that such a provision was necessary to achieve the object of preventing tax evasion.

Provision in the Estate Duty Act.

22. So much as regards provisions for proper enforcement. We should, next refer to a provision in the Estate Duty Act,

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1. A.I.R. 1962 S.C. 1563.

Paragraph 16, *supra.*

3. *S. Srinivasan* v. *Commissioner of Income-tax,* (1967) 63 I.T.R. 273

which is very pertinent in the present context, and which[1] we quote below[2] :—

Section 34(2).

"(2) Where any such estate as is referred to in sub-section (1) includes any property exempt from estate duty, the estate duty leviable on the poperty not so exempt shall be an amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been so exempt, the same proportion as the value of the property not so exempt bears to the value of the whole estate.

Explanation.—For the purposes of this sub-section, "property exempt from estate duty" means —

(i) any property which is exempt from estate duty under section 33;

(ii) any agricultural land situate in any State not specified in the First Schedule ;

(iii) the interests of all coparceners other than the deceased in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana Law."

Law Ministry's Advice on the Estate Duty Bill.

23. It appears that the validity of this provision was doubted by the late Dr. Aliadi Krishnaswami Iyer,[3] and the Ministry of Finance consulted[4] the Ministry of Law on the subject when the Bill was under discussion.

The gist of the advice given by the Ministry of Law was as follows[5] :—

"A question has been raised as to whether the aggregation of agricultural land in a non-scheduled State would be

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1. Section 34(2), Estate Duty Act, 1952.
2. As to the constitutional position with reference to estate duty, *see* :—
(*a*) Article 366(g);
(*b*) Union List, entries 87-88;
(*c*) State List, entries 47-48;
(*d*) Article 269 (1) (b).
3. As a Member of the Rajya Sabha.
4. Lok Sabha Debates, 8th September, 1953.
5. Lok Sabha Debates, 8th September, 1953.

constitutional. A further contention may also be raised that as the Parliament is acting as an agent of the Scheduled States, the agricultural lands in these States should be treated as separate estates. The doubt arises from the fact that the States which have not agreed may pass their own legislation to assess an estate duty on such lands, and further because in the Income-tax Act the agricultural income arising in a State which is exempted from income-tax is not included for that purpose. The power given to the Parliament to legislate on the subject of estate duty in respect of property other than agricultural land should necessarily be construed in its widest amplitude and it would be open to Parliament to adopt any method by which property within its jurisdiction are assessed to estate duty."

Provision in the Estate Duty Act not challenged.

24. The fact that the provision[1] in the Estate Duty Act has stood for about twenty years without challenge, can be said to lend support to the view that it does not suffer from any serious constitutional infirmity. No doubt, this factor is not conclusive on the point. But it is very unlikely that those who have had to pay estate duty on the basis of the provision, and who had competent legal advice at their disposal would have refrained from challenging it, unless the legal fraternity took the view that it was valid.

With reference to this aspect, we cannot do better than quote the observations of Dixon J. (as he then was). He said—

"....time does not run in favour of legislation. If it is *ultra vires*, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported.[2]"

Presumption in favour of validity.

25. Finally, we may also refer here to what is commonly known as the presumption in favour of validity of legislation.

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1. Paragraph 22-23, *supra*.
2. *Grace Bros. Pvt. Ltd.* v. *The Commonwealth*, (1946) 72 C.L.R. at p. 289.

26. Where the constitutional validity of an enactment is in issue, the Court will not hold it to be *ultra vires* unless the invalidity is clear beyond all doubt. As Dixon J. observed—

> "In discharging our duty of passing upon the validity of an enactment, we should make every reasonable intendment in its favour. We should give to the powers conferred upon the Parliament as ample an application as the expressed intention and the recognized implications of the Constitution will allow. We should interpret the enactment, so far as its language permits, so as to bring it within the application of those powers and we should not, unless the intention is clear, read it as exceeding them[1]."

No serious risk of proposal being challenged as attempt at indirect legislation on a matter outside competence.

27. For the reasons stated above, we are of the view that implementation of the proposal in question by legislation (without amendment of the Constitution) does not run a serious risk of being regarded as an attempt to do indirectly[2] what cannot be done directly[3],—a doctrine which expresses judicial attitude towards "colourable legislation[4]."

The inclusion of agricultural income in "total income" assessed under the Central Income-tax Act would not amount to the imposition of a basic liability to tax on agricultural income, as no tax is actually required to be paid on it.

Points summed up.

28. To summarise what we have stated above, the proposal in question can be implemented without constitutional amendment, for the following reasons :—

(i) The proposed legislation falls, in pith and substance, within the Union List, entry 82, and is therefore within the competence of Parliament[5].

(ii) A wide interpretation should be placed on the legislative entries, including those relating to taxation[6].

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1. *Attorney-General (Vic.)* v. *The Commonwealth*, (1945) 71 C.L.R. 237, 267.

2. *See* the point in paragraph 6, *supra*.

3. As to this maxim, *see*—Anderson, "Essence, Incidence and Device", (1960) 34 Australian Law Journal 294.

4. *Gajapati Narayan Deo* v. *The State*, (1954) S.C.R. 1, 12, followed in *Sonapur Tea Co.*, A.I.R. 1962 S.C. 137, 140.

5. Paragraphs 9 to 11, *supra*.

6. Paragraphs 12-13, *supra*.

(iii) The power to enact a law levying a tax includes the power to enact provisions for the effective enforcement of the law. The judicial decisions as to taxation Laws are instructive in this context[1].

(iv) The fact that the provision in the Estate Duty Act, section 34(2), has stood unchallenged for twenty years, lends further support to a view favouring validity of the proposal[2].

(v) Any doubt regarding the validity of a law should be settled in favour of its validity, unless there are strong reasons to the contrary[3].

Answer to the first question.

29. In the light of the above discussion, we would answer the first question[4] in the affirmative.

Parliament may, in a law levying a tax on income other than agricultural income, provide for taking into account agricultural income for the purpose of determining the rate of such tax on income other than agricultural income.

Second question does not arise.

30. In view of our answer to the first question[5], the second question does not arise.

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1. Paragraphs 14 to 21, *supra*.
2. Paragraphs 22 to 24, *supra*.
3. Paragraph 25, *supra*.
4. Paragraphs 2-3, *supra*.
5. Paragraph 29, *supra*.

Before we part with this Report, it is our pleasant duty to place on record our warm appreciation of the assistance we have received from Mr. Bakshi, Secretary of the Commission, in dealing with the problem covered by the Report. As usual, Mr. Bakshi first prepared a draft which was treated as the Working Paper. The draft was considered by the Commission point by point and its conclusions recorded and, in the light of the decisions, Mr. Bakshi prepared a final draft for consideration and approval. At all stages of the study of this problem, Mr. Bakshi took an active part in our deliberations and has rendered very valuable assistance to the Commission.

P. B. GAJENDRAGADKAR .. .. *Chairman*

V. R. KRISHNA IYER
P. K. TRIPATHI .. .. *Members*
S. S. DHAVAN

P.M. BAKSHI .. .. .. *Secretary*

NEW DELHI;
The 28th August, 1972.