
**(2001) 2 BomCR 704 : (2001) 168 CTR 416 : (2001) 249 ITR 195 : (2003) 129 TAXMAN
936**

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 498 of 1994

Goa Salaried Tax
Payers Association and
Others

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Oct. 19, 2000

Acts Referred:

Constitution of India, 1950 – Article 13, 14#Income Tax Act, 1961 – Section 14, 15, 16, 17,
206C

Citation: (2001) 2 BomCR 704 : (2001) 168 CTR 416 : (2001) 249 ITR 195 : (2003) 129
TAXMAN 936

Hon'ble Judges: T.K. Chandrashekhara Das, J; P.V. Kakade, J

Bench: Division Bench

Advocate: M.S. Usgaonkar and S. Usgaonkar, for the Appellant; S.K. Kakodkar Joseph Vaz
and S.R. Rivonkar, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.

Petitioner No. 1 is an association of salaried taxpayers which is registered under the
provisions of the

Registration of Societies Act. Petitioners Nos. 2 and 3 are members of the association
and they are salaried persons. The petitioners in the writ

petition challenge the constitutional validity of Section 5A of the Income Tax Act, 1961,
which was introduced by way of an amendment under the

Finance Act, 1994, which came into force on April 1, 1994. Retrospectivity is given to that
section from April 1, 1963. Section 5A reads as

follows :

5A. Apportionment of income between spouses governed by Portuguese Civil Code.--(I)
Where the husband and wife are governed by the

system of community of property (known under the Portuguese Civil Code of 1860 as "Communion Dos Bens") in force in the State of Goa and in

the Union Territories of Dadra and Nagar Haveli and Daman and Diu, the income of the husband and of the wife under any head of income shall

not be assessed as that of such community of property (whether treated as an association of persons or- a body of individuals), but such income of

the husband and of the wife under each head of income (other than under the head "Salaries") shall be apportioned equally between the husband

and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively, and the

remaining provisions of this Act shall apply accordingly.

(2) Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the

head "Salaries", such income shall be included in the total income of the spouse who has actually earned it.

2. The petitioners contended that the said section excluded in its operation salaried persons which has no legal justification. All other citizens who

are domiciled in Goa and to whom the Portuguese Civil Code of 1860 was applicable are governed by the system of community of property.

Under this system each spouse is entitled to inherit half the share of the property of the other spouse and income therefrom is also liable to be

shared equally among the spouses and they are always assessed separately in the total income of the husband and wife, respectively. u/s 5A, the

statute has recognised the system of community of property for the purpose of assessment in respect of all the income other than salary. u/s 14 of

the Income Tax Act, it is stated that the income has to be computed and classified under the five heads, namely, salaries, income from house

property, profits and gains of business or profession, capital gains and income from other sources. The petitioners' grievance in a nutshell is that in

the matter of assessment, the principle of community of property as envisaged under the common civil code applicable to the people of the State of

Goa is in respect of all the heads of income shown in Section 14 except salary. According to them, this exclusion of salaried persons or that group

of persons for the purpose of assessment is per se discriminatory and violative of Article 14 of the Constitution of India.

3. The reply of the Department to this challenge, in short, is that Goa was liberated from Portuguese regime on December 19, 1961. From this

date onwards the people of Goa are liable to be taxed under the provisions of the Income Tax Act because it is deemed that the provisions of the

Income Tax Act are extended to the territory which is newly annexed to the Union of India. Till Section 5A came into force the Income Tax Act

has not recognised the community of property, which is specially applicable to the Goan citizens, for the purpose of assessment of Income Tax.

But in 1974, a Division Bench of this court in Commissioner of Income Tax, Mysore Vs. Purushotam Gangadhar Bhende, has held that a house

property which yielded income became the property of the communion of the husband and wife and they are not liable to be assessed as a body of

individuals but they are entitled to be assessed in their individual and separate capacity under the Income Tax Act. The reason stated by the

Division Bench of this court is that Article 1108 of the Portuguese Civil Code lays down that the marriage as per the custom of the country consists

in communion between the consorts, of all their estates, present and future, not excluded by law ; and Article 1109 enlists what is excluded from

the communion. The Division Bench noted that the income of the estate is not what has been excluded under article 1109 of the Portuguese Civil

Code and this court has held that a social system which has existed for a long time in the territory has to be recognised and given meaning while

making assessment under the Income Tax Act also. Therefore, this court held that (page 947) :

... having regard to the relevant provisions of the Portuguese Civil Code and Article 10 of the Commercial Code, the respective half shares of the

husband and wife in the income from the house property which is the property of the communion of the husband and wife married according to the

custom of Goa, should be assessed separately in equal shares in the hands of each of them, and not in the hands of "the body of individuals" of the

communion of husband and wife, for the relevant assessment year.

4. In 1983, another Division Bench of the Bombay High Court in Additional Commissioner of Income Tax, Mysore Vs. Mr. and Mrs. Valentino

F. Pinto, Mapuca, held that the income from business run by the communion of the husband and wife married as per the custom of Goa should be

assessed separately in equal shares in each of them and not in the hands of the body of individuals of the communion. Thus, we see in the aforesaid

two decisions that income from the house property and income from the business in the matter of assessment, the system prevailing in the State of

Goa of the community of property between the spouses has been recognised. It may be noted that, as we indicated earlier, by these two decisions

two heads of income which are grouped u/s 14 have been embraced. Subsequently, another Division Bench of the Bombay High Court in

Commissioner of Income Tax Vs. Modu Timblo (Individual), has taken a different stand as far as the salaried persons are concerned. In an

elaborate judgment this court has held that the income from salary is to be taxed under the provisions of the Income Tax Act and while making

such an assessment the share of income on the basis of the principle of community of property need not be adhered to. It has been held that the

income from salary should be assessed and taxed on such individual who draws the salary. In fact in the aforesaid case, three questions were

posed which are as under (page 652) :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the income from business, share

income from partnership firms and interest earned on bank accounts have to be assessed in the hands of the "body of individuals" consisting of Mr.

and Mrs. Modu Timblo ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the dividend income received by the

communion of interest of husband and wife married under the Portuguese Civil Code is liable for assessments in equal shares in the hands of each

of the consorts without taxing it in the hands of the "body of individuals" ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the entire managing director"s

remuneration and perquisites have to be assessed in the hands of Mr. Modu Timblo, individual, and not one-half of the same ?

5. This court has held that question No. (1) was answered in favour of the Revenue, question No. (2) was answered in favour of the assessee and

question No. (3) was answered in favour of the Revenue. In this case we are only concerned about question No. (3). The reason for answering the

question No. (3) in that judgment of this court has been stated thus (page 664):

In view of the foregoing discussion, we are of the clear opinion that the communion of husband and wife married under the custom of Goa and

governed by the Portuguese Civil Code constitutes "a body of individuals" for the purposes of the Income Tax Act and it will have to be decided in

respect of each head of income whether the income has accrued or arisen to the body of individuals as such or to its members individually...

It may also not be out of place to mention here that the fact that a particular combination of persons has been held to be a body of individuals or

association of persons in respect of a particular activity, does not mean that it will be so in respect of all activities or income therefrom. The status

may vary from activity to activity. This aspect of the matter has been dealt at length by us in an earlier decision in Commissioner of Income Tax Vs.

Shiv Sagar Estates (Aop), , Income Tax Reference No. 231 of 1977, dated 17/18th December, 1992. It is observed thus (at page 961) :

"A person or group of persons may work in more than one capacity. The Income Tax Act clearly recognises dual capacity of a person or a group

of persons. In respect of the property in question, these persons were co-owners, in the company they were shareholders, in the partnership firm

they were partners. They might also have formed an association of persons to carry on any other activity. All these can go on simultaneously. The

very same persons may receive income as co-owners, as shareholders, as partners or as members of an association of persons and their status in

respect of a particular income will not affect their status in respect of other incomes." . . .

As observed by the Supreme Court in Commissioner of Income Tax, West Bengal III Vs. Imperial Chemical Industries (India) (P.) Ltd., : "the

true test for the application of the rule of diversion of income by an overriding title is whether the amount sought to be deducted in truth never

reached the assessee as his income."

Applying the above test, we are of the clear opinion that the principle of diversion of income by overriding title has no application in the case of

communion of husband and wife governed by the Portuguese law. In that view of the matter, for the purpose of assessment, it will be necessary to

decide in respect of every income whether it has accrued or arisen to the communion as a body of individuals or to both, the husband and wife

separately in proportion to their shares in the property or to any one of them, as in the case of "salary" . . .

The above definition clearly goes to show that what is assessed under the head "Salaries" is the salary due to the assessee from an employer or a

former employer. In the instant case, the husband was the employee. It was he who was employed. The salary accrued to him and it was payable

to him by the employer. The employer, while doing so, was not concerned with the customary laws of his employee. It is impossible to

comprehend that the income from salary can be said to arise to a person who is not in employment. The customary law or specific law of Goa

determines the rights of the husband and wife in the property and income. It cannot make the wife also an employee where the husband is

employed nor, by reference to such law, can it be said that half of the salary due to the husband for the services rendered by him will accrue to the

wife. In matters like this, the customary law has no relevance. Situated thus, we are of the clear opinion, that the income from salary is the income

of the person who is the employee which in the instant case was the husband and that being so, it was assessable in the manner laid down in

Sections 15 to 17 of the Act, in his hands alone and no part of it can be assessed in the hands of the wife. The interest of the wife in the said

income by virtue of the customary law may, at the most, amount to application of income after it has accrued or arisen to the husband who is the

employee. Serious anomalies would arise if we were to agree with the contention of the assessee that income from salary derived by one person is

to be treated as income derived by two persons, because in that case, the person who is not an employee, who does not have anything to do with

the employer and does not receive anything from him, will be deemed to be in receipt of salary from the employer and will also be entitled to

standard deduction which is intended to cover expenses incidental to the earning of such income. It may also be observed that though the standard

deduction is expressed in terms of percentage of the salary, there is a ceiling fixed for such allowance. If the income is assessed in the hands of the

husband and wife separately, both of them would be entitled to claim standard deduction which, in a given case, may far exceed the ceiling or may

go up to double the amount of the ceiling. We find it extremely difficult to accept such a submission. We, therefore, reject the same. We hold that

the whole of the income from salary is assessable in the hands of the husband or wife, as the case may be, whoever is in employment and to whom

it is due from the employer. The same will apply to remuneration received by a person working as managing director of a company because such

remuneration will be assessed as income from salaries.

6. In view of the Division Bench decision as cited above, practically an assessee who is domiciled in Goa and who opted for the Portuguese Civil

Code became impossible to apply to principle of community of property in the matter of Income Tax assessment and became disentitled to claim

the benefit of sharing the income and of the assessment individually. They all became liable for assessment as a body of individuals which created

certain harshness to the people of Goa State. Presumably to obviate that difficulty Section 5A has been introduced in the Income Tax Act. A

reference to the speech made by the Finance Minister in Parliament in presenting the Finance Budget for 1994-95 makes it amply clear. It reads as

under (see [1994] 206 ITR 5) :

111. The system of community of property (Communion Dos Bens) is peculiar to the people living in Goa, Daman, Diu, Dadra and Nagar Haveli.

Recently, certain judicial decisions have been handed down according to which business income of a Goanese family becomes taxable entirely in

the hands of a single entity. The decisions affect the time honoured method of dividing such income equally and assessing such income separately in

the hands of the husband and wife. This I understand has given rise to unnecessary tensions and anxiety amongst the Goan couples. To set at rest

all controversies in this area, I propose to make suitable amendments in the Income Tax Act to ensure that, excepting for salaries, any other

income arising to the citizens governed by the system of community of property in Goa, will be divided equally and assessed separately in the

hands of the husband and the wife.

7. Therefore, the main object of bringing out Section 5A is to reduce the rigour of the judgment in Commissioner of Income Tax Vs. Modu Timblo

(Individual), .

8. In the above factual matrix learned counsel for the petitioners, Mr. Usgaonkar, has contended that the sole purpose of bringing about the

amendment to the Income Tax Act by introducing a new section, Section 5A, is to recognise the principle of community of property and extend the

benefit of sharing the income individually between the husband and wife. In that exercise Parliament has discriminated against the salaried income

by excluding that income from the manner of assessment laid down u/s 5A. According to him, the classification made in respect of salaried income

is not based on any intelligible differentia and, therefore, the salaried persons have been subjected to hostile treatment. Therefore, Section 5A, to

the extent it excludes in its fold the salaried income, is liable to be quashed as it is violative of Article 14 of the Constitution of India. Learned

counsel for the petitioners, Mr. Usgaonkar, also challenges the retrospectivity given to that section.

9. Learned counsel for the petitioners demonstrated before us as to how a salaried person is aggrieved if he is excluded from the application of

principle of community of property in the matter of assessment. He emphasised that there is no justification at all for such exclusion where all other

heads of income, namely, professional income, income from property, profits from business and other sources are all brought to the hotchpot of

Section 5A. There is absolutely no justification for excluding those categories of persons, who draw salaries. He demonstrated before us as to how

the hostility operates, for illustration :

ANNEXURE-I

The provisions are detrimental of Section 5A to salary earning spouse if this spouse has professional/business income since his half share is

included in the income of salary earning spouse resulting in higher taxes.

Example : A and B both doctors, are husband and wife governed under the system community of property as applicable to persons of Goan origin.

A carries on private medical practice and B is employed as a doctor in hospital. Each earn net income of Rs. 1,00,000. The tax liability of the

respective spouses will be as under :

Total Mr. A Mrs. B

Professional income (gets 1,00,000 50,000 50,000

divided)

Salary income (no division) 1,00,000 -- 1,00,000

50,000 1,50,000

Tax due : Nil 21,000.

10. Based on this illustration he emphasised that the discrimination is real but unjust and unequitable and clearly against Article 14 of the

Constitution of India. In elaborating his argument, he submits that Section 14 provides for the computation of income. As we have indicated earlier,

it has five heads. But, according to counsel for the petitioners, all are income. Of course each head of income has to be treated separately for the

purpose of computation of income. For example salary income is entitled for standard deduction whereas the income from profits and gains of

business or profession receive a distinct treatment and are entitled for certain other deductions. But, according to counsel, that does not change the

character of each head of income because all heads are income. If a person is having income from all these five heads, even though those five

heads for the purpose of assessment or computation are treated differently, it does not lose its essential character of income or in other words all

the heads of income meant the separate nature of income. Those heads imply only source of income. He cited a decision of the Supreme Court in

Karanpura Development Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal, . That decision laid down what is the meaning of

income". Page 367 of the decision reads as follows :

The Income Tax Act puts the tax on income, profits and gains irrespective of the source from which they are derived. Section 3 of the Act

provides, inter alia, that Income Tax shall be charged on the total income of every company. u/s 4(1), total income includes all income, profits or

gains from whatever source derived, subject to certain conditions about residence, etc., with which we are not concerned. Section 6 then

enumerates six heads of income chargeable to Income Tax. Two of these heads are (a) income from property and (b) profits and gains of business,

etc. The several heads into which income is divided under the Income Tax Act do not make different kinds of taxes. The tax is always one ; but it

may arise from different sources to which the different rules of computation have to be applied. The manner of this computation is indicated in the

sections that follow. Before income, profits and gains can be brought to computation, they have to be assigned to one or more heads. These heads

are in a sense exclusive of one another, and income which falls within one head cannot be assigned to, or taxed under, another head.

11. Therefore, the contention of counsel is that though Section 14 denotes separate heads of sources of income, in reality and in law all this is

income and one head of income cannot be discriminated or taken away or excluded for a different treatment from another head.

12. Learned counsel further argues if once Parliament recognises the principle of community of property, salary alone cannot be excluded for

computing the income of husband and wife. He relied upon the observations made by this court in the case of Additional Commissioner of Income

Tax, Mysore Vs. Mr. and Mrs. Valentino F. Pinto, Mapuca, and also in the case of CIT v. Purushotam Gangadhar Bhende [1377] 106 ITR 932.

He also brought to our notice a Supreme Court decision in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , wherein it was held

thus (page 547) :

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation.

In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded

on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that

differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different

basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis

of classification and the object of the Act under consideration. It is also well established by the decisions of this court that Article 14 condemns

discrimination not only by a substantive law but also by a law of procedure."

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this court further establish--

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable

to him and not applicable to others, that single individual may be treated as a class by himself ;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there

has been a clear transgression of the constitutional principles ;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to

problems made manifest by experience and that its discriminations are based on adequate grounds ;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the

clearest ;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of

common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation ; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of

the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the

presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for

subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular

law attacked as discriminatory and violative of the equal protection of the laws.

13. A close perusal of the decision of this court, according to counsel for the petitioners, will go to show that there is no circumstance or

justification for Parliament to exclude salary when the existing conditions in the territory of Goa were recognised by Parliament and that recognition

is reflected in enacting Section 5A and the exclusion of salary under any parameters laid down by the Supreme Court as aforesaid is not justified.

He also cited a decision of the Supreme Court in S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty., . In that case the

Supreme Court was examining the validity of certain exemptions given to Government servants in the matter of assessment. In that context, the

Supreme Court has held (page 275 of 68 ITR) :

8. It is not in dispute that taxation laws must also pass the test of Article 14. That has been laid down by this court in Kunnathat Thathunni Moopil

Nair Vs. The State of Kerala and Another, . But as observed by this court in East India Tobacco Co. Vs. State of Andhra Pradesh, , in deciding

whether the taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it

will tax, and that a statute is not open to attack on the ground that it taxes some person or objects and not others ; it is only when within the range

of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article

14.

It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.

(9) The complaint in this case is that within the range of the selection made by the State for the purpose of exemption, namely, members of certain

Scheduled Tribes residing in specified areas, the law operates unequally and the inequality in question cannot be justified on the basis of any valid classification.

(10) There can be no distinction between the income earned by a Government servant and that earned by a person serving in a company or under

a private individual. More or less similar is the case in respect of the income earned by persons practising one or more of the professions.

Admittedly, the income earned by the members of the Scheduled Tribes residing in Khasi-Jaintia Hills excepting in the case of the Government

servants is exempt from Income Tax be it as salaried officers, lawyers, doctors or persons in other walks of life. Is there any legal basis for this

differentiation ? Prima facie it appears that Government servants have been discriminated against and the discrimination in question is writ large on

the face of the provisions in question.

14. He also contended that such an exclusion of salaried persons is confiscatory in nature as laid down by the Supreme Court in the decision of

Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . In that case, the Supreme Court was examining the legality of imposing

land tax by the State of Kerala irrespective of the nature and fertility of the land, income or potentiality, etc. The Supreme Court observed in

paragraph 8 (page 558) as follows :

8. It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the

petitioners, has no reference to income, either actual or potential, from the property sought to be taxed. Hence, it may be rightly remarked that the

Act obliges every person who holds land to pay the tax at the flat rate prescribed whether or not he makes any income out of the property, or

whether or not the property is capable of yielding any income. The Act, in terms, claims to be "a general revenue settlement of the State".

15. Learned counsel for the petitioners has demonstrated in the illustration, that the exclusion of salaried persons partakes the character of

confiscatory nature and, therefore, liable to be struck down.

16. Learned counsel for the petitioners further submits that having selected a group of persons, without any classification based on intelligible

differentia, making further classification among them is arbitrary and irrational. He referred to an observation of the Supreme Court in Union of

India and another etc. etc. Vs. A. Sanyasi Rao and other etc. etc., , which is as follows (page 352) :

The only other question that remains for consideration is, whether Sections 44AC and 206C are in any way hit by Article 14 of the Constitution of

India. The whole section is attacked as discriminatory in having selected certain businesses or trades for hostile treatment.

17. Learned counsel has contended that the Income Tax Act has treated all the Income Tax payers equally. There is no different criteria adopted in

the Income Tax Act at the stage of assessment after income is assessed. Here u/s 5A after income is assessed salaried persons are treated

differently and unequally. This is totally unjustified. In support of his argument, he also cited a decision in Md. Usman and Others Vs. State of

Andhra Pradesh and Others, . In paragraph 4, (page 1803), the Supreme Court observed as under :

According to the petitioners the equality doctrine is attracted not only when equals are treated as unequals but also where unequals are treated as

equals. It was contended on behalf of the petitioners that a statutory provision may offend Article 14 of the Constitution both by finding differences

where there are none and by making no difference where there is one.

18. He has also cited a decision of the Supreme Court in All India Sainik Schools Employees Association v. Defence Minister-cum-Chairman,

Board of Governors, Sainik School Society, AIR 1989 SC 88. He lastly cited the decision in Shashikant Laxman Kale v. Union of India :

[1990]185ITR104(SC) , wherein the Supreme Court has observed as under (page 110) :

The main question for decision is the discrimination alleged by the petitioners. The principles of valid classification are long settled by a catena of

decisions of this court but their application to a given case is quite often a vexed question. The problem is more vexed in cases falling within the

grey zone. The principles are that those grouped together in one class must possess a common characteristic which distinguishes them from those

excluded from the group ; and this characteristic or intelligible differentia must have a rational nexus with the object sought to be achieved by the

enactment . . .

The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus

between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected

out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be

imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned

It is well-settled that the latitude for classification in a taxing statute is much greater; and, in order to tax something, it is not necessary to tax

everything. These basic postulates have to be borne in mind while determining the constitutional validity of a taxing provision challenged on the

ground of discrimination,

19. Mr. Usgaonkar further contended that salaried persons cannot be a separate class for having a separate treatment in the hands of the

Legislature, Learned counsel also submitted that since a hostile treatment has been meted out against the salaried persons and liability is cast in the

matter of assessment of Income Tax than the other group envisaged u/s 5A, that section should not have been given retrospective effect.

Therefore, this section so far as it excludes the salaried persons is liable to be set aside.

20. Learned senior counsel appearing for respondents Nos. 2 and 3. Mr. Kakodkar, has contended that for the computation of income under the

separate heads have been treated separately by the Income Tax Act itself. Therefore, there is nothing wrong in excluding the salaried persons for

the purpose of assessment in the manner provided u/s 5A. He brought to our notice the justification stated by the Department in its reply. In

paragraph 12 of the reply it has been stated thus :

12. With reference to para. 39 of the petition and the grounds set out in para. 41, it is denied that Section 5A of the Income Tax Act is a

colourable piece of legislation and/or that it is arbitrary and discriminatory and/or in any manner whatsoever violative of any fundamental right or

Article 300A of the Constitution. The section was introduced after considering the decisions of the High Court of Bombay and due to the

administrative problems arising out of creation of body of individuals. The said section was introduced stating that income would be computed first

and then divided between husband and wife so as to overcome the administrative problems, not legal problems. All the decisions of the Bombay

High Court having been accepted and the income under the head "House property" (being divided after the decision in the matter of Commissioner

of Income Tax, Mysore Vs. Purushotam Gangadhar Bhende,), income from capital gains and other sources are also being assessed separately as

decided by the Bombay High Court in the case of Commissioner of Income Tax Vs. Modu Timblo (Individual), . With reference to business or

professional income, the court decided that the income arose in the hands of the "body of individuals" which created administrative problems like

re-opening settled procedures, adjustment of taxes paid in individual status, etc., in order to avoid these procedural problems, the benefit of sharing

income is extended to the business/professional income as well. Hence, introduction of Section 5A cannot be considered as arbitrary and in no

way discriminatory against any class of persons. All submissions made by the petitioners in the said paras and the grounds therein which are

contrary to and inconsistent with what is stated by me herein and in the rest of the affidavit in reply are denied as though specifically set out herein

and traversed.

21. In principle what has been stated by respondent No. 2 is that valid reason has been stated by this court in the case of Commissioner of Income

Tax Vs. Modu Timblo (Individual), for treating separately the salaried persons and the law laid down by this court in that decision is binding. A

legal formula has been demonstrated by this court in that judgment and Parliament has recognised that principle in order to exclude the salaried

persons from the operation of Section 5A of the Income Tax Act. Therefore, the exclusion of salaried persons cannot be assailed on the basis that

the classification made for a special treatment of the salaried persons is not made on intelligible differentia. Learned counsel for respondents Nos. 2

and 3 further submitted that the classification particularly in taxation laws need not be logical. Many times it appears to be harsh. He drew our

attention to the observations of the Supreme Court in Ganga Sugar Corporation Ltd. v. State of Uttar Pradesh [1980] 45 STC 36, wherein Shri

Krishna Iyer J. observed thus (page 44) :

The final shot fired to bring down the fiscal levy on the score of ultra vires is from the customary barrel of Article 14. A multi-pronged attack,

based on Article 14, was launched. The levy cast equal burdens on unequals and so was invalid on the ground of discrimination. A tax, by this

canon, must be linked to price of canes, not its quantity, lest the millers be made to pay unevenly for two consignments of equal weight but unequal

price. A refinement of the same argument was developed on the basis of the sugar output from the cane crushed. The sucrose content of sugarcane

varies from cane to cane and, perhaps, from mill to mill and to lump them together quantitatively for a uniform impost is to turn the Nelson's eye on

the inter se inequality. Procrustean cruelty is anathema for the law where unequals are equalised into arbitrary conformity. Counsel submit that

sucrose is the touchstone and where that content varies but the levy is standardised on the weight of cane the exaction must be outlawed under

Articles 14 and 13 and even 19 (unreasonable).

22. He also brought to our notice another decision in Sri Krishna Das Vs. Town Area Committee, Chirgaon, , wherein it was observed as under

(page 411) :

The courts cannot review these decisions. In paragraph 16 of the counter-affidavit the TAC tried to explain the reason for not taxing salt, sugar

and rice stating that they were not local produce but were imported from distant places and that the tax was levied only on the local produce which

came from neighbouring places. The courts cannot review the wisdom or advisability or expediency of a tax as the court has no concern with the

policy of legislation, so long as they are not inconsistent with the provisions of the Constitution. It is only where there is abuse of its powers and

transgression of the legislative function in levying a tax, it may be corrected by the judiciary and not otherwise. Taxes may be and often are

oppressive, unjust, and even unnecessary, but this can constitute no reason for judicial interference. When taxes are levied on certain articles or

services and not on others, it cannot be said to be discriminatory. Cooley observes : "Every tax must discriminate ; and only the authority that

imposes it can determine how and in what directions." The TAC having decided to impose weighing dues on the goods mentioned in the bye-laws

it is not for the court to question it on the ground that some similar commodities or commodities arriving by rail or road were not subjected to the

tax.

23. After hearing both counsel we feel that, even though prime facie the arguments of counsel for the petitioners, Mr. Usgaonkar, appear to be

attractive, dwelling on it in a deeper plane, we think it otherwise, because we are dealing with a fiscal statute. The reasons stated for assailing the

exclusion of salaried persons from the operation of Section 5A is not based on any legal ground. As we indicated earlier, but for Section 5A all the

citizens in Goa are liable to be taxed under the provisions of the Income Tax Act like any other citizen in the other parts of the country. Because of

the historical background and social conditions and also because for centuries together the people of the State of Goa have been separated from

the main stream of the nation, Parliament thought it fit to enact Section 5A. Viewing in that prospective we are of the opinion that Section 5A

provides certain concessions to the Goan people at the stage of assessment of Income Tax. In other words, after considering and treating all the

heads of income separately and computed u/s 14 of the Income Tax Act at the time of assessment or levying the tax, another manner of

computation has been introduced for fixing tax liability in respect of all the heads or all the sources of income as contemplated u/s 14 of the Income

Tax Act, except salary income. Therefore, what is the plea of the petitioners ? The plea of the petitioners in the writ petition, therefore, is that

certain benefits have been afforded to the other categories of citizens of Goa and that benefit has to be extended to them also. Their case is that

such benefits in the matter of computation of income for fixing the liability of Income Tax, the sources from house property, other income, business

and profession and other sources are allowed to be computed in a manner advantageous to them but that advantage has not been extended to the

petitioners because they are drawing salary. It is a well settled principle that a statute cannot be challenged on the ground that certain persons have

been given a special treatment and because the petitioners are not extended that benefit the statute is bad. That cannot be a ground of challenge

much less under Article 14 of the Constitution of India. It is quite natural that the Legislature could not embrace all classes of people for the

purpose of assessment of tax/taxation. It is appropriate at this juncture to refer to a judgment of the Supreme Court in *Sakhawat Ali Vs. The State*

of Orissa, . That is a case where a lawyer who appears against the municipality had filed his nomination paper for election as a councillor of the

municipality. His nomination was rejected on the ground that he works against the interest of the municipality. He assailed that section that there is

no reasonable classification caused. According to him, even a litigant who files a litigation against the municipality was allowed to contest. So there

is no rhyme and reason prescribing such a disqualification under the provisions of the Orissa Municipal Act. The Supreme Court has observed in

that context thus (page 170) :

The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It

is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which

would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in

any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution.

24. Therefore, the contention of the petitioners is that they were also to be included in the category for giving benefit of assessment by sharing the

income between the spouses is a matter of policy. That policy may not fit in the square of logic. As contended by respondent No. 2 in the reply

there is a discernible dissimilarity between the salaried persons and the other persons as has been exposed by the Division Bench of this court in

the case of *Commissioner of Income Tax Vs. Modu Timblo (Individual)*, . According to us, Parliament is justified in grouping the salaried persons

as separate and distinct in that context. One has to understand the reality and practical problems in making the classification particularly in taxation

laws. Take for example in Goa in a Central Government office there may be employees who are coming from other States and also employees

who are citizens of Goa. All are receiving salary equally and their salaries and service conditions are equal and similar. All the salaried people are

entitled to compute their income under the provisions of the Income Tax Act. It is difficult or it is not practical for Parliament to discriminate that

salaried persons again on the basis of their origin or historical background for the purpose of assessment of Income Tax. Parliament or the

Legislature will have to take into account the reality or practicality of the circumstance subsisting in imposing taxation. The Supreme Court has

observed in Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, thereof as follows (page 259 of 77 STC) :

We are here concerned with the constitutional validity of a legislative provision which has the effect of making the cooked food sold in the posh

eating houses alone exigible to sales-tax while exempting from that levy the cooked food sold in the moderate eating houses. Reasonableness of the

classification has to be decided with reference to the realities of life and not in the abstract. A discernible dissimilarity between those grouped

together and those excluded is a pragmatic test, if there be a rational nexus of such classification with the object to be achieved. In the abstract all

cooked food may be the same since its efficacy is to appease the hunger of the consumer. But when the object is to raise only limited revenue by

taxing only some category of cooked food sold in eating houses and not all cooked food sold anywhere, it is undoubtedly reasonable to tax only

the more costly cooked food. The taxed cooked food being the more costly variety constitutes a distinct class with a discernible difference from

the remaining tax-free cooked food. A blinkered perception of stark reality alone can equate caviar served with champagne in a luxury hotel with

the gruel and buttermilk in a village hamlet on the unrealistic abstract hypothesis that both the meals have the equal efficacy to appease the hunger

and quench the thirst of the consumer. Validity of a classification under our Constitution does not require such a blurred perception.

(underlining supplied)

25. As observed by the Supreme Court a discernible dissimilarity is there in the case of salaried persons other than the persons who have other

sources of income. A different treatment has been meted out even for the computation of income and the manner of payment of tax, reduction, etc.

Therefore, in this context we are not able to find out any arbitrariness in excluding the salaried persons from the benefits that have been conferred

by way of Section 5A of the Income Tax Act. The argument of learned counsel for the petitioners that once Section 14 is operated and classified

the income assessed in the manner provided in the Income Tax Act, then after left over in the net income that is to be shared between husband and

wife taking into account the principle of community of property. According to him, what really is meant by Section 5A is the charging of income.

We cannot agree to this submission. The computation of income of course is done u/s 14 of the Act. But, Section 5A too, according to us, has

prescribed another manner of computation of income as regards the spouses of Goan origin who follow the rule of community of property.

Therefore, Section 5A has also laid down a computation. To sum up we are not agreeable to the argument advanced by learned counsel for the

petitioners for the classification made to the salaried persons for denying the benefit of Section 5A.

26. In the result, we find that Section 5A is constitutionally valid and the challenge of the petitioners against that section is to be rejected.

27. In the result, the writ petition is dismissed. In the circumstances of the case, no order as to costs.