



HIGH COURT OF SIKKIM, GANGTOK
(Civil Extra Ordinary Jurisdiction)

D.B. : HON'BLE SHRI SUNIL KUMAR SINHA, ACTG. C.J. &
HON'BLE SHRI S. P. WANGDI, J.

W. P. (C) No. 30/2013

PETITIONER

Sikkim Manipal University,
represented through its Registrar
Mrs. Vandana Suhag,
having its Office at 5th Mile, Tadong,
Gangtok – 737 103.

Versus

RESPONDENTS

1. State of Sikkim,
through the Secretary,
Finance Department,
Income and Commercial Tax Division,
Gangtok – 737 101, Sikkim.
2. Additional Commissioner,
Commercial Tax Division,
Finance, Revenue and Expenditure
Department,
Government of Sikkim.
Gangtok – 737 101.
3. Joint Secretary/Income Tax Officer,
Income and Commercial Tax Division,
Finance Department,
Gangtok – 737 101.
4. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.



Writ Petition under Article 226 of the Constitution of India

Appearance :

Mr. S. Pal and Mr. Bhaskar Raj Pradhan, Senior Advocates with Ms. Manju Agarwal, Mr. Bajrang Manot, Mr. Tashi R. Barfungpa, Mr. Sashi Tulsian, Ms. Sonam Chuden Bhutia, Ms. Tshering Palmoo Bhutia and Mr. Hissay Dorjee Bhutia, Advocates for the Petitioner.

Mr. J. B. Pradhan, Additional Advocate General and Mr. Karma Thinlay, Senior Government Advocate with Mr. S. K. Chettri, Asstt. Government Advocate for the State-Respondents 1 to 3.

Mr. A. Moulik, Senior Advocate with Ms. Kessang D. Bhutia, Advocate for Respondent No.4.

J U D G M E N T

(18.11.2014)

Following Judgment of the Court was delivered by

SUNIL KUMAR SINHA, ACTG. CJ.

1. A short question involved in this Writ Petition is :-

"Whether after extension of the Income Tax Act, 1961 to the State of Sikkim with effect from 01.04.1990, the Sikkim State Income Tax Manual, 1948 stands repealed and the assessments made thereunder for Accounting Years 1996-97 to 2004-2005 (Assessment Years 1997-98 to 2005-2006) would be without authority of Law?"

2. The facts, briefly stated, are as under:-

2.1 By the Constitution (Thirty-sixth Amendment) Act, 1975, Sikkim was admitted as a State of the Union of India with effect from 26.04.1975 and Article 371F of the Constitution of India was inserted to provide for special



provisions with respect to the State of Sikkim. Sub-clause (n) of Article 371F empowers the President of India to issue public notification and to extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of such notification. On 07.11.1988, a Notification No. S.O.1028(E) was issued by the President of India extending the provisions of Income Tax Act, 1961 to the State of Sikkim. By a further Notification being No. S.O.148(E) dated 23.02.1989, the Ministry of Finance, Central Government, appointed 1st day of April, 1989, as the date on which the Income Tax Act, 1961 shall come into force in the State of Sikkim in relation to the previous year relevant to the Assessment Year commencing on the 1st day of April, 1989. By virtue of Section 26 of the Finance Act, 1989, the Income Tax Act, 1961 was made applicable to the State of Sikkim from the Previous Year relevant to the Assessment Year commencing from 01.04.1990, thereby extending the date of applicability of the Income Tax Act, 1961 by one year from the date as specified in the earlier notification dated 23.02.1989.

2.2 The Petitioner-University was established in the year 1995 by an enactment of the State Government, namely,



the Sikkim Manipal University of Health Medical and Technological Sciences Act, 1995, and it started imparting various courses by constituting its unit. The Petitioner-University was included in the list of Universities maintained by the University Grants Commission (UGC) u/S. 2(f) of the University Grants Commission Act, 1966 on 09.12.1998.

2.3 On 07.07.2006, the Joint Secretary/ITO, Income and Commercial Tax Division passed an assessment order under clause 4 sub-clause (i) of the Sikkim State Income Tax Manual, 1948, against the Petitioner for the Assessment Years 1997-98 to 2005-2006 pertaining to Accounting Years 1996-97 to 2004-2005 and the income tax of the Petitioner was assessed. The said assessment order was served upon the Petitioner with a Demand Notice No.293/IT for the amount of Rs.7,65,35,648/- and the Petitioner was asked to pay the said amount. According to the Petitioner, a sum of Rs.76,53,655/- being the 10% of the said amount was deposited by it and an appeal was filed by the Petitioner before the Special Commissioner-cum-Secretary, Income and Commercial Tax Division, Finance, Revenue and Expenditure Department, Government of Sikkim for cancellation of the assessment order dated 07.07.2006



and refund of the ad-hoc payment of Rs.76,53,655 with interest. The Petitioner also claimed exemption u/S. 17 of the Sikkim State Income Tax Manual, 1948.

- 2.4** On 03.03.2011, the appeal of the Petitioner was dismissed by the said authority on two grounds, i.e., (i) the Special Secretary does not have authority to act as an appellate authority under the Sikkim State Income Tax Manual, 1948 and (ii) the Petitioner could not produce any document to substantiate that it was a charitable institution for claiming income tax exemption and for non-payment of 50% income tax assessed.
- 2.5** The petitioner then agitated the matter before the Chief Minister of Sikkim, praying for exemption from paying income tax under the Sikkim State Income Tax Manual, 1948, because according to it the same was already repealed, and refund of the ad-hoc payment made.
- 2.6** On 11.09.2012, the Additional Commission, Commercial Tax Division, Revenue and Expenditure Department, Government of Sikkim, issued a memo, based on the opinion of the Law Department and the Law Commission of Sikkim, that the repeal of an enactment does not extinguish the liabilities accrued under the repealed enactment and the demand having been raised in July, 2006. The Petitioner was liable to pay income tax to the



tune of Rs.9,09,10,818/- under the Sikkim State Income Tax Manual, 1948 and the Department was entitled to realise the same by following the recovery procedure.

2.7 The Petitioner, thereafter, made various representations, *inter alia*, on the grounds that the Sikkim State Income Tax Manual, 1948, having been repealed, was not applicable upon the Petitioner and the Respondent authorities were not entitled to assess and demand income tax from the Petitioner from 01.04.1990 when the Income Tax Act, 1961 became applicable to the State of Sikkim. However, when no relief was granted on those representations, the instant writ petition was filed.

3. Mr. S. Pal, Learned Senior Counsel appearing on behalf of the Petitioner, has argued that the Sikkim State Income Tax Manual, 1948 was repealed after the extension of the Income Tax Act, 1961 to the State of Sikkim with effect from 01.04.1990. The Petitioner is governed by the Income Tax Act, 1961 and has now been assessed thereunder. Therefore, any income tax imposed or levied under the Sikkim State Income Tax Manual, 1948 and the proceedings for levying such tax drawn by the State authorities vide assessment order dated 07.07.2006 were without jurisdiction and nullity. In terms of Article 265 of the Constitution of India, no tax can be levied or collected except by authority of Law. Therefore, the impugned Assessment Order dated 07.07.2006 (Annexure-P6) along with other



subsequent orders/demands may be quashed and a sum of Rs.76,53,655/- may be refunded to the Petitioner.

4. On the other hand, Mr. J. B. Pradhan, Learned Additional Advocate General appearing on behalf of the State, has opposed these arguments. He has argued that earlier, when the Petitioner was assessed under the Income Tax Act, 1961, it filed W.P.(C) No.13/2006 challenging the above proceedings by taking the grounds that the said enactment of 1961 was not applicable to it and the Petitioner was governed by the Sikkim State Income Tax Manual, 1948 and the said proceedings may be quashed. Therefore, now, the Petitioner is estopped from taking a different plea and its petition should be dismissed.

5. Mr. A. Moulik, Learned Senior Counsel appearing on behalf of the Union of India, has argued that the Petitioner was liable to pay income tax under the Income Tax Act, 1961. Therefore, after filing the earlier writ petition, the petitioner succumbed to the jurisdiction of the competent authority under the said Act and after passing the orders of the income tax authorities under the Income Tax Act, 1961, the Petitioner has filed an appeal so far as Assessment Years 1998-1999 to 2002-2003 is concerned. As far as the Assessment Year 2004-2005 is concerned, the Income Tax Appellate Tribunal "A" Bench: Kolkata has passed an order in favour of the Petitioner against which an appeal u/S. 260A of the Act has been filed before the Calcutta High Court, Kolkata and thus, the matters, relating to



payment for income tax by the Petitioner under the Income Tax Act, 1961, are pending before the appropriate forums.

6. We have heard Learned Counsel for the parties.

7. By two Notifications of the Central Government (No. S.O.1028(E) dated 07.11.1988 and No. S.O.148(E) dated 28.02.1989), the Income Tax Act, 1961 was extended to the State of Sikkim with effect from 01.04.1989, i.e. from the Assessment Year 1989-90. However, after some practical difficulty, Section 26 of the Finance Act, 1989 made statutory provisions for application of the Income Tax Act, 1961 to the State of Sikkim that notwithstanding anything contained in the above two notifications issued by the Government of India, so far as they relate to the commencement of the Income Tax Act, 1961 in the State of Sikkim with effect from Previous Year relevant to Assessment Year commencing on the 1st day of April, 1990, the provisions of the Income Tax Act, 1961 shall come into force in the State of Sikkim with effect from Previous Year relevant to the Assessment Year commencing on the 1st day of April, 1990, and any law corresponding to the Income Tax Act, 1961, which, immediately before such commencement, was in force in the State of Sikkim shall be deemed to have effect in relation to the Previous Year beginning with the 1st day of April, 1988 and ending with the 31st day of March, 1989 and shall continue in force for the purpose of the levy, assessment and collection of income tax or for the purpose of imposing any penalty or for any other purposes



whatsoever connected with, or incidental to any of the purposes aforesaid under such law.

8. Thereafter, making a clarification on the point of the commencement of Income Tax Act, 1961 in the State of Sikkim, a Circular bearing No.550 (Annexure-P3) was issued and it was clarified that such a provision u/S. 26 of the Finance Act, 1989 became necessary as the earlier notification issued by the Ministry of Home Affairs had extended the Income Tax Act, 1961 to the State of Sikkim with effect from 01.04.1989, i.e. from the Assessment Year 1989-90 and, accordingly, the law already in existence in the State of Sikkim stood repealed from 01.04.1988.

9. The matter relating to application of the Income Tax Act, 1961 and the Sikkim State Income Tax Manual, 1948, however, remained in controversy for a long period between the two Governments and a Committee was constituted to resolve the issue of implementation of the Income Tax Act, 1961, in Sikkim, which conducted a Meeting on 20.04.2007 in Delhi. The Minutes of the Meeting chaired by Member (Inv.), CBDT, Government of India (GOI) has been filed as Annexure-R1. The deliberations on Issue No.(iv) would show that it was indicated by the Chairman that though the Income Tax Act, 1961 was extended to Sikkim with effect from Assessment Year 1989-90 by the President of India in exercise of power under clause (n) of Article 371F of the Constitution of India, due to difficulties pointed out by the Government of Sikkim, the implementation of the Income Tax Act,



1961 was deferred by one year (Assessment Year 1989-90 to Assessment Year 1990-91) and due to this, the Sikkim State Income Tax Manual, 1948 stood repealed automatically from the date in view of clause (k) of Article 371F of the Constitution of India. It was clearly indicated by the Chairman that levy of income tax as per the Sikkim State Income Tax Manual, 1948, after 01.04.1990, was unconstitutional. On a clarification being sought by the officers of the Government of Sikkim that whether it was required that provisions for repealing of the Sikkim State Income Tax Manual, 1948 could be included in the Income Tax Act, 1961, the Chairman clarified that according to the Central Government's view, the Sikkim State Income Tax Manual, 1948 stood repealed automatically once the Income Tax Act, 1961, being a Central Legislation, was extended to Sikkim.

10. Thereafter, the Government of India formulated a package comprising of 10 (ten) points, dated 20.08.2007 (Annexure-R2), and communicated the same to the Chief Secretary of Government of Sikkim, containing Point No.(V) that the Sikkim State Income Tax Manual, 1948 would stand repealed with effect from Assessment Year 1990-91 relevant to the Previous Year beginning on 01.04.1989. In reply to the said communication dated 20.08.2007, the State Government accepted the above proposal and a communication dated 21.08.2007 (Annexure-R3), in this regard, was sent to the Government of India. Then a resolution (Annexure-R4) was passed on the Direct Tax Laws adopted by the Sikkim Legislative Assembly



on 10.06.2008, which also indicates that the Sikkim State Income Tax Manual, 1948 would stand repealed by implication.

11. Neither the above documents nor the above events have been disputed by any party. Therefore, it is clear that on the stand taken by both the Governments, the Sikkim State Income Tax Manual, 1948 stood repealed on 01.04.1990, by necessary implication, after extension of the Income Tax Act, 1961 to the State of Sikkim. However, it still requires to be tested for determination of the correct legal position in this regard as the law(s) neither operate nor cease to operate on the admission of the parties and they have to be interpreted for every purpose, including its commencement, enforcement, continuance, repeal and other like instances, when required, on various provisions contained therein and the contemporary laws and principles of interpretation.

12. Mr. Pal has argued that even if we ignore the admissions of the concerned Government, a deep analysis of both the enactments would show that the Sikkim State Income Tax Manual, 1948 was impliedly repealed from 01.04.1990 on extension of the Income Tax Act, 1961, in the State of Sikkim. In fact, he emphasized on ***doctrine of implied repeal***. The doctrine of implied repeal is a concept in constitutional theory, which states that where an Act conflicts with an earlier one, the later Act takes precedence and the conflicting parts of the earlier Act are repealed. This doctrine is expressed in Latin phrase "***leges posteriores priores contrarias***



abrogant", which means "**later laws repeal earlier laws inconsistent therewith**" (vide: ***Broom's Legal Maxims – Tenth Edition, p.347***). Implied repeal is to be contrasted with the express repeal by the Legislature. The continuance of existing legislation, in the absence of an express provision of repeal, is always presumed. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act "that the two cannot stand together" (vide: ***Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition 2004, p.568***).

13. In ***Municipal Corporation of Delhi v. Shiv Shanker : 1971 (1) SCC 442***, it was held that the Legislature, which may generally be presumed to know the existing law, is not expected to intend to create confusion by its omission to express its intent to repeal in clear terms. The Courts, therefore, as a rule, lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. The repeal must, if not express, flow from necessary implication as the only intendment. The provisions must be wholly incompatible with each other so that the two provisions operating together would lead to absurd consequences, which intention could not reasonably be imputed to the Legislature. It is only when a consistent body of law



cannot be maintained without abrogation of the previous law that the plea of implied repeal should be sustained. To determine if a later statutory provision repeals by implication an earlier one it is accordingly necessary to closely scrutinize and consider the true meaning and effect both of the earlier and the later statute. Until this is done it cannot be satisfactorily ascertained if any fatal inconsistency exists between them. The meaning, scope and effect of the two statutes, as discovered on scrutiny, determines the legislative intent as to whether the earlier law shall cease or shall only be supplemented. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in *pari materia* although in apparent conflict, should also, so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject-matter, that the former, being the later expression of the Legislature, may be held to prevail, the prior law yielding to the extent of the conflict.

14. In ***R. S. Raghunath v. State of Karnataka & anr. : AIR 1992 SC 81***, it was held that there should be a clear inconsistency between the two enactments before giving an overriding effect to the non obstante clause but when the scope of the provisions of an



earlier enactment is clear the same cannot be cut down by resort to non obstante clause. The observation made in ***Municipal Council, Palai v. T. J. Joseph & ors. : AIR 1963 SC 1561***, was also taken note of in this judgment, which reads that there is a presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing Laws on the same subject-matter and therefore, when it does not provide a repealing provisions, it gives out an intention not to repeal the existing legislation. It is further observed that such a presumption can be rebutted and repeal by necessary implication can be inferred only when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act, that the two cannot stand together.

15. In ***State of M.P. v. Kedia Leather & Liquor Ltd. & ors. : (2003) 7 SCC 389***, taking note of above decisions and many others, it was held that there is presumption against a repeal by implication; and the reason of this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation. When the new Act contains a repealing section mentioning the Acts which it expressly repeal, the presumption against implied repeal of other laws is further strengthened on the principle *expression unius (persone vel rei) est exclusion alterius* (The



express intention of one person or thing is the exclusion of another). The continuance of the existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred. The necessary questions to be asked are :

- (1) Whether there is direct conflict between the two provisions.
- (2) Whether the legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law.
- (3) Whether the two laws occupy the same field.

When the court applies the doctrine, it does no more than give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The court leans against implying a repeal. To determine whether a later statute repeals by implication an earlier statute, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments.



16. In the instant case, the Income Tax Act, 1961 was already in force, which was extended to the State of Sikkim on 01.04.1990. Thus, it was not an instance of enacting a new taxation law for the State of Sikkim after it became a part of India. Therefore, the principle that the Legislature, while enacting a law, has complete knowledge of the existing laws on the same subject-matter and the possible consequence thereof would not be applicable. In such a situation, if it does not provide a repealing provision, only by this, it cannot be held that the intention was not to repeal the existing legislation.

17. If we examine the situation in light of the principles, referred to above, we find that the provisions of the two enactments are quite different and both the enactments cannot stand together. The Income Tax Act, 1961 is exhaustive than the Sikkim State Income Tax Manual, 1948 and, as is clear from the provisions of both the enactments, they occupy the same field relating to levy of income tax and its recovery. Thus, if both the enactments are held to be applicable, it shall create a great anomaly. There is yet another reason to take this view, that is, if both the statutes are held to be operating in the same field, there would be a situation of existing two laws relating to income tax and in absence of any protection coming forward, the assesseees may be subjected to double taxation. It is, thus, clear that on account of the above inconsistencies, the two enactments cannot stand together and we have no hesitation in



holding that on extension of the Income Tax Act, 1961, the Sikkim State Income Tax Manual, 1948 was repealed by necessary implication.

18. So far as the arguments relating to estoppel, quoted in Paragraph 4 (supra), raised by Learned Additional Advocate General is concerned, we may note that estoppel is a rule of evidence which bars a party from denying or alleging certain facts owing to his/its previous conduct, allegation, or denial. It is well settled that there could not be estoppel against the statutes. One cannot be prevented by any estoppel from ascertaining his rights under a particular Act/statute so long the said Act/statute continues to be the law in force. There may be many reasons like wrong advice, ignorance, confusion or not correctly understanding the law or the rights, for a party to take pleadings against his rights under the Act or statute, which he/it can always correct either in the same proceeding or in any subsequent proceeding and take a plea according to his/its rights under the Act/statute.

19. We may also note that in the earlier matter, nothing was finally determined by the Court. The Writ Petition was filed, ad-interim order was taken and ultimately, it was withdrawn with liberty to approach to the competent authority/forum for redressal of the grievances stated in the Writ Petition. Thus, the above controversy was not finally determined by the Court.



20. Learned Additional Advocate General also argued on the doctrine of approbation and reprobation. This is a general principle that a party cannot be allowed to approbate and reprobate. It is based on the maxim "*Allegans contraria non est audiendus*", which means "*He is not to be heard who alleges things contradictory to each other*" [vide: *Broom's Legal Maxims (supra) p.103*]. But before applying this doctrine one must ascertain that there has to be estoppel in one form or the other. If there is no estoppel, there would be no question of the doctrine coming into operation (vide: *Nagubai Ammal & ors. v. B. Shama Rao & ors. : AIR 1956 SC 593*).

21. In *Commissioner of Income Tax, Madras & ors. v. V. MR. P. Firm Muar & ors. : AIR 1965 SC 1216*, it was held that the doctrine of "approbate and reprobate" is only a species of estoppels; it applies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. If a particular income is not taxable under the Income-tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not. If it is not, the Income Tax Officer has no power to impose tax on the said income.

22. In the instant case, we have already held that the Sikkim State Income Tax Manual, 1948 stood repealed after extension of the Income Tax Act, 1961 in the State of Sikkim with effect from



01.04.1990. The Petitioner has come claiming its rights as an assessee under the Income Tax Act, 1961. Therefore, any adverse plea like it was not an assessee under this Act or that the Income Tax Act, 1961 was not applicable to the Petitioner, being a plea relating to the statute would not operate as estoppel against it and the arguments advanced by the Additional Advocate General is to be rejected.

23. It is, thus, clear from the material placed before us that firstly, the Petitioner approached this Court by filing Writ Petition, saying that the Income Tax Act, 1961 was not applicable, but, the said Writ Petition was withdrawn with liberty to approach to the competent authority/forum and, thereafter, the Petitioner succumbed to the Income Tax authorities under the Income Tax Act, 1961 and presently, various proceedings are pending before the appropriate forums under the said Act. The above facts with specifications are widely stated in paragraphs 3 and 4 of the counter affidavit filed by the Union of India/Respondent No.4.

24. The Petitioner has also claimed the refund of Rs.76,63,655/- together with interest till the date of realization. During the course of arguments, Mr. Pal, on instructions, fairly conceded that the previous interest or the interest *pendent lite* on the said amount may not be awarded to the Petitioner, but the State may be directed to refund this amount within the time-frame prescribed by this Court.



Therefore, we are not deliberating on this point, however, we would prefer to issue appropriate direction in this regard.

25. For the foregoing reasons, we allow this Writ Petition and record our findings that after extension of the Income Tax Act, 1961 to the State of Sikkim with effect from 01.04.1990, the Sikkim State Income Tax Manual, 1948 stands repealed and the assessments made thereunder for Accounting Years 1996-97 to 2004-2005 (Assessment Years 1997-98 to 2005-2006) are without authority of Law, *non est* and nullity.

26. Consequently, the impugned Order dated 07.07.2006 (Annexure-P6), Demand Notice dated 07.07.2006 (Annexure-P7) and the other consequential orders/memos thereto are quashed. The State-respondents are directed to refund a sum of Rs.76,53,655/- to the Petitioner within a period of 90 (ninety) days from today, failing which this amount shall carry interest @6% p.a. from the date commencing after completion of 90 (ninety) days till realization.

27. No order as to costs.

Sd/-

(S. P. Wangdi)
Judge
18.11.2014

Sd/-

(Sunil Kumar Sinha)
Acting Chief Justice
18.11.2014

Approved for Reporting: Yes/~~No~~.
Internet : Yes/~~No~~.