GVK Industries Ltd. vs Income Tax Officer (2011): Article 245 & Extra-Territorial Laws Explained

Court: Supreme Court of India (Constitution Bench) **Citation:** (2011) 4 SCC 36 **Date:** 01 March, 2011 **Bench:** S.H. Kapadia, C.J., B. Sudershan Reddy, K.S. Panicker Radhakrishnan, Surinder Singh Nijjar and Swatanter Kumar, JJ.

Facts of the Case

GVK Industries Ltd., an Indian company, made a payment to a foreign company for consultancy/advisory services. The Income Tax Department held that GVK was required to deduct tax at source (TDS) before making the payment, relying on Section 9(1)(i) and Section 9(1)(vii)(b) of the Income Tax Act, 1961. GVK challenged this in a writ petition before the Andhra Pradesh High Court, arguing Section 9(1)(vii)(b) was beyond Parliament's legislative competence and violated Article 14. The High Court held Section 9(1)(i) inapplicable but Section 9(1)(vii)(b) applicable and valid, relying on Electronics Corporation of India Ltd. vs. CIT (the ECIL case). GVK appealed to the Supreme Court, and the matter was referred to a Constitution Bench.

Issues Before the Court

1. Is Parliament's power to legislate confined to the territory of India, or can it make laws with respect to extra-territorial aspects or causes?
2. Can Parliament make a law purely 'for' a foreign territory that has no connection with India at all?

Arguments

GVK argued that Section 9(1)(vii)(b), by taxing a payment connected to services rendered by a foreign company, exceeded Parliament's territorial legislative competence and was ultra vires Article 245. The Revenue argued Parliament had validly exercised its power under Article 245(2), since the payment and the deduction obligation were genuinely connected to India (the payer being an Indian company).

Decision of the Court

The Constitution Bench held that Parliament's power to make laws with extra-territorial operation under Article 245(2) is not unlimited: such laws are valid only if the extra-territorial aspect or cause has a real (direct or indirect) connection or nexus with India — its territory, interests, welfare or security. A law with effect outside India that is genuinely connected to India's interests remains a valid law for India. A law made purely for a foreign territory, with no real connection to India, would be beyond Parliament's power (ultra vires the Constitution). The Court declined to lay down a fixed formula for how much connection is required, holding this is a factual question to be decided case by case.

Principle of Law

Under Article 245, Parliament may validly enact laws having extra-territorial operation, but only where the extra-territorial aspect or cause bears a real and genuine connection (nexus) with India's territory, interests, welfare or security. A law made solely for a foreign territory, without any such nexus, is beyond Parliament's legislative competence.

Important Legal Provisions

Article 245(1) and 245(2) (extent of laws made by Parliament and State legislatures); Article 1 (territory of India); Article 14 (right to equality); Section 9(1)(i) and Section 9(1)(vii)(b), Income Tax Act, 1961.

Important Observations

The Court explained that terms like 'aspects or causes,' 'extra-territorial aspects or causes,' and 'nexus with India' form the analytical foundation for testing any law with extra-territorial reach. It emphasised that the real-connection requirement is a factual, case-by-case inquiry, not a mechanical or quantitative test, and that Parliament may itself set a stricter nexus standard within a specific statute, which courts must then follow.

Simple Explanation

Parliament can make laws that touch things happening outside India, but only if those things genuinely affect India in some real way. A law about something entirely foreign, with no link to India at all, is not a law Parliament has the power to make.

Teaching Notes

This is a compact, high-yield case for exams on Article 245 — the two-part takeaway (extra-territorial effect vs a law 'for' a foreign country) is the most commonly tested distinction. Pair with Electronics Corporation of India Ltd. vs CIT (ECIL), which the Andhra Pradesh High Court relied on below.

Key Points for Students

- Leading case on Article 245 and the territorial nexus doctrine.
- Parliament CAN legislate on extra-territorial aspects, but only with a real connection to India.
- A weak, doubtful or imaginary connection is not sufficient.
- A law made purely "for" a foreign territory, with no Indian nexus, is ultra vires.
- No fixed formula for "how much" nexus is needed — decided case by case on facts.

Case-Law Video

Watch the video explanation: https://www.youtube.com/watch?v=lVG3VwKjbAo