Dooars Tea Co. Ltd.

Vs

Commissioner of Agricultural Income-Tax, West Bengal

Civil Appeal No. 381 of 1960

(P. B. Gajendragadkar, M. Hidayatullah, K. Subha Rao JJ)

18.08.1961

JUDGMENT

GAJENDRAGADKAR J. –

This appeal by a certificate arises out of a reference made to the High Court at Calcutta under section 63 (I) of the Bengal Agricultural Income-tax Act (IV of 1944) (hereafter called the act). The appellant, the Dooars Tea Co. Ltd., is a public limited company and it carries on business of growing, manufacturing and selling tea. For the accounting year 1948 which corresponds to the assessment year 1949-50 a return was submitted by the appellant in respect of its agricultural income showing the said income at Rs. 3,45,702. The Agricultural Income-tax Officer, however, did not accept the correctness of the said return and increased the amount to Rs. 4,41,940. This increased amount included a sum of Rs. 39,849 and it represented the market value of the appellant's agricultural income from bamboos, thatching grass and fuel timber. It is this amount thus added by the Agricultural Income-tax Officer to the agricultural income of the appellant in the relevant year that has given rise to the pre

The facts leading to the reference are not in dispute. The appellant holds a large tract of land under lease from the local Government and it is common ground that in a part of the said land it grows bamboos, thatching grass and fuel timber. During the relevant year it cut down some bamboos, some thatching grass and fuel timber and used the same for the purpose of its business. The bamboos, the thatching grass and fuel timber were grown by the appellant on its land by agricultural operations which were carried on by the servants and labourers employed by the appellant. After they were grown they were utilised by the appellant for the purpose of its tea business and were not sold either in the market or otherwise. It has been found that the appellant has been utilising the bamboos, thatching grass and fuel timber grown by it on its land in this way every year.

Before the tax authorities the appellant urged that the agricultural produce in question did not constitute agricultural income within the meaning of the Act because the same had not been sold. The appellant's case was the agricultural produce grown by it on its own land could not in law be treated as its income unless it was converted into its money equivalent or into something which was money's worth; in other words, unless the said produce was sold. The department, on the other hand, has taken the view that the several varieties of agricultural produce grown by the appellant on its land and utilised by it for its business were themselves agricultural income and the tax on the said income cannot be avoided on the plea that the said varieties had not been sold. This dispute went up to the Tribunal; but the Tribunal agreed with the conclusion of the tax authorities and held that the produce in question constituted agricultural income of the appellant for the relevant year, and so the addition of Rs. 39,849 m

It was also urged by the appellant in the assessment proceedings that even if the produce in question constituted the appellant's agricultural income its market value could not be computed in money because no rule had been framed for the computation of the market value of such income. The appellant urged that rule 4 of the Rules framed under the Act was inapplicable to the present case. This contention has also been rejected by the tax authorities as well as by the Tribunal. In the result the agricultural income found to have earned by the appellant for the relevant year has been duly taxed.

Feeling aggrieved by the final order passed by the Tribunal in this matter the appellant required the Tribunal to refer two questions for the opinion of the High Court, and in due course the Tribunal made the reference as required. The two questions referred for the opinion of the High Court have been thus framed by the Tribunal :

> "(1) Is bamboo, thatch, fuel, etc., grown by the assessee company and utilised for its own benefits in its tea business, agricultural income within the meaning of the Bengal Agricultural Income-tax Act ? and
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> (2) If the answer to question No. (I) be in the affirmative, can such income be computed under rule 4 of the rules framed under the Act ?

The High Court has answered both these questions in the affirmative and against the appellant. The appellant then applied for and obtained a certificate from the High Court under section 64 (2) of the Act read with article 135 of the Constitution. The High Court has certified that the case is a fit case for appeal to this court because it was conceded by both the parties before the High Court that this case had been chosen by the assessee and the department as a test case since all the tea companies are interested in the questions raised in the present reference. It is with this certificate that the appellant has come to this court with its present appeal.

The answer to the first question would depend upon the construction of the definition of agricultural income contained in section 2 (I) (b) of the Act. The charging section is section 3. It provides that subject to its two provisos agricultural income-tax shall be charged for each financial year in accordance with and subject to the provisions of the Act at the rate or rates specified in the schedule in respect of the total agricultural income of the previous year of every individual, Hindu undivided family, company, firm or other association of individuals and every Ruler of a Part B State. Section 7 provides for the computation of tax and allowances under the head "agricultural income from agriculture." Do the relevant and material words used in the definition of agricultural income by section 2 reach the subject of taxation in the present case ? That is the short question which falls for our decision.

Section 2 (I) (a) deals with the agricultural income consisting of rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in a State or subject to a local rate assessed or collected by officers of the Government as such. We are not concerned with this part of the definition. Section 2 (I) (b) reads thus :

> "any income derived from such land by -
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> (i) agriculture, or
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> (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent- in-kind to render the produce

raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in item (ii)."

The respondent, the Commissioner of Agricultural Income-tax, West Bengal, contends that the agricultural produce in the present case falls directly under section 2 (I) (b) (i). It is income derived from agriculture land by agriculture. It is not disputed by the appellant that in the context income may mean either cash or income in kind. It is also conceded by the appellant that the dictionary meaning of the word "income" included "produce of a farm", and so if we were to construe the relevant clause in the light of the dictionary meaning of the word "income" it would take in agricultural produce with which we are concerned in the present case. It is, however, urged that the word "income" necessarily denotes, and has reference to, profit or gain, and profit or gain cannot be made unless the produce is sold and realises its value. No person can trade with himself and so if the agricultural produce is used by the appellant for its own purposes there is no element of sale involved in the transaction and there ca

In support of this argument it has been urged before us that the definition of agricultural income prescribed by section 2 of the Act is common to all the State enactments in respect of agricultural income and is the same as the definition of agricultural income prescribed by section 2 (I) of the Income-tax Act. The same definition has been adopted by the Constitution under article 366 (I). That being so, it is contended that in interpreting the word "income" it would be relevant to rely on the decisions under the Income-tax Act. In Alexander Tennant v. Robert Sinclair Smith Lord Halsbury has cited with approval Lord Wensleydale's observation in In re Micklethwait that "it is a well-established rule, that the subject is not to be taxed without clear words for that purpose; and also, that every Act of Parliament must be read according to the natural construction of its words." In that case it was held that the benefit which the appellant assessee derived from having rent-free house provided for him by the ban

The same argument is put in another form on the authority of the decision of this court in Sir Kikabhai Premchand v. Commissioner of Income-tax. In that case Bose J., who spoke for the majority of the court, stated that it was well recognised that in revenue cases regard must be had to the substance of the transaction rather than its mere form, and he proceeded to observe that in the case before the court, disregarding technicalities, it was impossible to get away form the fact that the business was owned and run by the assessee himself; and if he was to be held liable for the tax "you reach the position that a man is supposed to be selling to himself and thereby making a profit out of himself which on the face of it is not only absurd but against all canons of mercantile and income-tax law". Mr. Mitra suggests that in taxing the agricultural produce utilised by the appellant for its own purpose the respondent is really taxing the appellant on the basis that it has traded with itself and made profits on the

This argument is based on the assumption that income as defined by section 2 (I) (b) (i) must always be in the nature of profit or gain, and that inevitably postulates a sale transaction made at a profit or gain. Mr. Mitra seeks to derive assistance for this argument form the provisions of sections 4 and 6 of the Income-tax Act, says Mr. Mitra, must be equally true about the denotation of the word "income" under section 2 (I) (b) (i) of the Act.

In dealing with this argument it is necessary to bear in mind that the word "income" even as it is

used in the Income-tax Act has often been characterised by judicial decisions as formidably wide and vague in its scope. It is a word of elastic import and its extent and sweep are not controlled or limited by the use of the words "profits and gains" in sections 4 and 6. As has been observed by Sir George Lowndes in Commissioner of Income-tax v. Shaw Wallace & Co. the object of the Indian Income-tax Act is to tax "income", a term which it does not define. It is expanded, no doubt, into income, profits and gains, but the expansion is more a matter of words than of substance. Similar is the observation of Lord Russell in Maharaj Kumar Gopal Saran Narain Singh v. Commissioner of Income-tax where it has been observed that "the word 'income' is not limited by the words 'profits' and 'gains'. Anything which can properly be described as income is taxable under the Act unless expressly exempted ". The diverse forms whi

Going back to section 2 (I) (b) it refers to income derived from land which means arising from land and denotes income the immediate and effective source of which is land. Section 2 (I) (b) consists of three clauses. Let us first construe (ii) and (iii). Clause (ii) includes cases of income derived from the performance of any process therein specified. The process must be one which is usually employed by the cultivator or receiver of rent-in-kind; it may be simple manual process or it may involve the use and assistance of machinery. That is the first requirement of this proviso. The second requirement is that the said process must have been employed with the object of making the produce marketable. It is, however, clear that the employment of the process contemplated by the second clause must not alter the character of the produce. The produce must retain its original character and the only change that may have been brought about in the produce is to make it marketable. The said change in the condition of th

That takes us to clause (iii). The clause in terms and expressly refers to the income derived from sale. It refers to the sale price realised either by the cultivator or the receiver of rent-in-kind by the sale of the produce in respect of which the process as contemplated by clause (ii) has been performed. It is significant that the sale to which clause (iii) refers must be the sale of produce which has not been subject to any process other than that contemplated by clause (ii). Thus it may be stated that reading clauses (ii) and (iii) together they contemplate the sale of the produce - clause (ii) indirectly in as much as it refers to the process employed for making the produce marketable and clause (iii) directly in as much as it refers to the price realised by sale of the produce which has been subjected to the process contemplated by clause (ii). Therefore, it is clear that income derived from sale of agricultural produce has been provided for by clauses (ii) and (iii) and prima facie that would show th

Considered in the light of clauses (ii) and (iii) of section 2 (I) (b) what is the true scope and effect of the income contemplated by clause (i) ? In terms the clause takes in income derived from agricultural land by agriculture; and as we have already pointed out giving the material words their plain grammatical meaning there is no doubt that agricultural produce constitutes income under this clause. Is there anything in the context which requires the introduction of the concept of sale in interpreting this clause as suggested by the appellant ? In our opinion this question must be answered in the negative. Not only is there no indication in the context which would justify the importing of the concept of sale in the relevant clause, but as we have indicated the indication in the context which would justify the importing of the concept of sale in the relevant clause, but as we have just indicated the indication provided by clauses (ii) and (iii) is all to the contrary. What this clause seems clearly to have

The second question relates to the computation of agricultural income for the purposes of the Act. Rule 4, with the construction of which the second question is concerned, reads thus :

"4. For the purposes of the Act the market value of any agricultural produce shall, except in the case referred to in clause (a) of the proviso to sub-section (I) of section 8, be determined in the following manner, namely :

(I) If the agricultural produce was sold in the market, the market value shall be deemed to be the price for which such produce was sold;

(2) if the agricultural produce has not been sold in the market, the market value shall be deemed to be -

(a) where such produce is ordinarily sold in the market in its raw state, or after the performance of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render it fit to be taken to market, the value calculated according to the average price at which such produce has been so sold in the locality during the previous year in respect of which the assessment is made;

(b) where such produce is not ordinarily sold in the market in the manner referred to in sub-clause (a), the aggregate of -

(i) the expenses of cultivation;

(ii) the land revenue or rent, paid for the area in which it was grown; and

(iii) such amount as the Agricultural Income-tax Officer finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit on the sale of the produce in question as agricultural produce."

It is clear that rule 4 (I) cannot apply to the appellant's case for the agricultural produce in question has not been sold in the market but has been used by the appellant for its own business. The appellant contends that rule 4 (2) cannot also be invoked against it, and so there is no rule under which the agricultural income in question can be computed. Incidentally the appellant suggested that if its construction of rule 4 (2) is right it indirectly supports its case as to the true scope and effect of section 2 (I) (b) (i). The legislature knew that agricultural produce is not taxable unless it is sold, and so it has not made any rule for the computation of agricultural income alleged to have been received by the assessee from agricultural produce used by the assessee for its own purpose. On the other hand, the respondent contends that rule 4 (2) covers the present case, and if that is so, according to the respondent, that would incidentally support his construction of section 2 (I) (b) (i).

The argument urged by the appellant assumes that the two rules are based on a kind of basic dichotomy. Rule 4 (I) deals with the agricultural produce sold in the market, and rule 4 (2) with the agricultural produce which has been sold but not in the market. In other words, according to the appellant, both the rules assume that the agricultural produce has in fact been sold; rule 4 (I) deals with cases where it has been sold in the market and rule 4 (2) with cases where it has been sold but not in the market. If this argument is right then of course cases where agricultural produce has not been sold would remain outside the purview of both the rules; but is this argument right ? We have no hesitation in holding that it is not. In our opinion, rule 4 (2) deals with cases where agricultural produce has been sold outside the market as well as cases where agricultural produce has been sold outside the market as well as cases where agricultural produce has not been sold at all. The effect of reading the two sub-ru

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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