The Karimtharuvi Tea Estates Ltd., Kottayam & Another

Vs

State of Kerala & Others

Petitions Nos. 234 to 236 of 1961

(J. L. Kapur, A. K. Sarkar, Raghuvar Dayal, S. K. Das, M. Hidaytullah, JJ)

01.11.1962

JUDGMENT

RAGHUBAR DAYAL, J. –

These are three petitions under Art. 32 of the Constitution by the Karimtharuvi Tea Estates Ltd., Kottayam and one of its directors and members praying for a declaration that the Agricultural Income Tax (Amendment) Act, 1961 (Ker. IX of 1961), hereinafter called the Amendment Act, enacted by the Kerala State Legislature, is null and void and that the State's power to tax income from tea to agricultural income-tax is limited to taking 60% of the income computed for the purpose of the Indian Income-tax Act (hereinafter referred to as the Income-tax Act) as if it were income derived from business and for the issue of appropriate orders to the respondents viz., the State of Kerala, the Assistant Commissioner of Agricultural Income-tax, Kottayam, and the Deputy Commissioner of Agricultural Income-tax, Quilon, restraining them, their agents and servants from enforcing or acting upon the provisions of the aforesaid Amendment Act against the petitioner company.

The Karimtharuvi Tea Estates Ltd., Kottayam, petitioner No. 1, hereinafter called the petitioner, are the owners and managers of the Karimtharuvi and the Penshurst Tea Estates situate at Peermade in Kerala State. The Agricultural Income-tax Act, 1950 (originally the Travancore-Cochin Agricultural Income-tax Act XXII of 1950, amended as the Agricultural Income-tax Act, 1950 by Act VIII of 1957 of the Kerala Legislature), hereinafter called the Agricultural Income-tax Act, has been in force in the State of Kerala during the assessment years 1958-59, 1959-60 and 1960-61 for which the accounting years of the petitioner were 1957, 1958 and 1959 ending on December 31 of each year. The petitioner was assessed to agricultural income-tax under the provisions of the Agricultural Income-tax Act during those years. The grievance of the petitioner is that in computing the taxable income in the accounting years for the purpose of assessment of tax under the Agricultural Income-tax Act, the assessing authority did not allow deduction of the expenses incurred by it in the upkeep and maintenance of immature tea plants from which no agricultural income had been derived during those years, though such expenses were deducted by the Income-tax Department in connection with the assessment of income-tax with respect to the non-agricultural portion of the income from the petitioner's tea estate in those years. The petitioner filed appeals against the three assessment orders dated August 12, 1960, for assessment years 1958-59 and 1959-60 and dated October 11, 1960, for assessment year 1960-61, before the Deputy Commissioner of Agricultural Income-tax, Quilon. Those appeals are still pending.

On March 30, 1961, the Agricultural Income-tax (Amendment) Act, 1961 received the assent of the Governor of the State of Kerala. Sub-section (2) of s. 1 provides that this Act would be deemed to

have come into force with effect on and from April 1, 1951. Section 2 provides for the addition of Explanation 2 to s. 5 of the Agricultural Income-tax Act, 1950. This Explanation reads :

> "Nothing contained in this section shall be deemed to entitle a person deriving agricultural income to deduction of any expenditure laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income has been derived during the previous year."

The petitioner challenged the validity of the Amendment Act stating that it was not within the competence of the State Legislature and that its provisions contravened the provisions of Arts. 14, 19(1)(f) and (g) and 31 of the Constitution. At the hearing, however, the contentions about the Act contravening Arts. 19(1)(f) and (g) and Art. 31 were not raised. The main contention raised at the hearing is that the Legislature of the State of Kerala cannot enact such a provision which would make agricultural income under it different from 'agricultural income' as defined in the enactments relating to the Income-tax Act and that the impugned Explanation 2 to s. 5, if applicable to the income from tea plantations, would make the income from such plantations, for the purpose of the Agricultural Income-tax Act, higher than what it would be if computed in accordance with the definition in the Income-tax enactments. The contention is well-founded.

Entry 46, List II, of the Seventh Schedule to the Constitution relates to taxes on agricultural income. In view of cl. (3) of Art. 246 the State Legislature can enact laws about these taxes. Art. 366 provides that unless the context otherwise requires, the expression 'agricultural income' in the Constitution means agricultural income as defined for the purposes of the enactments relating to Indian income-tax. Therefore, the agricultural income about which a State Legislature may enact under Entry 46 of List II would be such income as defined in the Indian Income-tax Act. The relevant portion of the definition of 'agricultural income' in the Income-tax Act, 1922, reads :

> "(1) 'agricultural income' means -
>
> (a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such;
>
> (b) any income derived from such land by -
>
> (i) agriculture, or
>
> (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
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> (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 sub-clause (ii);
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> #X X X X X"##

The income derived from the sale of tea grown and manufactured by the seller is not solely derived from agriculture. It is an income which is derived partially from agricultural operations and partially from manufacturing processes. The income is partly derived from land by agriculture and partly

from business. It becomes necessary to determine the proportions of the two incomes in the entire income. Section 59 of the Income-tax Act provides for the making of rules for such determination.

The relevant portion of s. 59 of the Income-tax Act empowering the Central Board of Revenue to make rules reads :

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> (2) Without prejudice to the generality of the foregoing power, such rules may -
>
> (a) prescribe the manner in which, and, the procedure by which, the income profits and gains shall be arrived at in the case of -
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> (i) incomes derived in part from agriculture and in part from business;
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> #X X X X X##
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> (3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may -
>
> (a) prescribe methods by which an estimate of such income, profits and gains may be made, and
>
> (b) in cases coming under sub-clause (1) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax;
>
> and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.
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> #X X X X X##
>
> (5) Rules made under this section shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Act."

Rules 23 and 24 of the Indian Income-tax Rules, 1922, made under the above-quoted section, provide for the determination of income for the purposes of income-tax when the entire income is partially agricultural income and partially income chargeable to income-tax under the head 'business'. Rule 23 deals with such cases in general. Rule 24 deals with the case of tea grown and manufactured by the seller, and reads :

> "24. Income derived from the sale of tea grown and manufactured by the seller in the taxable territories shall be computed as if it were income derived from business, and 40 per cent of such income shall be deemed to be income, profits and gains liable to tax :
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> Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become

permanently useless in an area already planted, unless such area has previously been abandoned."

The result of rule 24 is that the income derived from the sale of tea grown and manufactured by the seller is to be computed in the first instance as if it was income derived from business. Consequently, the income would be computed in accordance with the provisions of s. 10 of the Income-tax Act. Clause (xv) of sub-s. (2) of s. 10 provides that in computing the income any expenditure by an assessee not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, would be deducted. Of the income so computed, 40 per cent is, under rule 24, to be treated as income liable to income-tax and it would follow that the other 60 per cent only will be deemed to be 'agricultural income' within the meaning of that expression in the Income-tax Act. It follows, therefore, that the power of the State Legislature to make a law in respect of taxes on agricultural income arising from tea plantations will be limited to legislating with respect to the agricultural income so determined. The State Legislature is free in the exercise of its plenary legislative power to allow further deductions from such computed agricultural income as it considers fit, but it cannot add to the amount of the agricultural income so computed by providing that certain items of expenditure deducted in the coputation of the income from a business under the provisions of the Income-tax Act be not deducted and be considered to be a part of the taxable agricultural income.

The relevant portion of the definition of 'agricultural income' in the Agricultural Income-tax Act reads :

"2. In this Act, unless there is anything repugnant in the subject or context -

(a) 'Agricultural income' means -

(1) any rent or revenue derived from land which is used for agricultural purposes;

(2) any income derived from such land in the State by -

(i) agriculture, or

(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 sub-clause (ii);

Explanation. - Agricultural income derived from such land by the cultivation of tea means that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purpose of the enactments relating to Indian Income-tax;

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This definition practically conforms to the definition of 'agricultural income' in sub-cls. (a) and (b)

of cl. (1) of s. 2 of the Income-tax Act. The Explanation added in the definition of 'agricultural income' in the Agricultural Income-tax Act in substance adopts what has been provided in rule 24 of the Income-tax Rules about the proportion of agricultural income from tea plantations. It follows therefore that agricultural income from tea plantations is to be computed in the same manner as it is computed under the provisions of the Income-tax Act.

Section 5 of the Agricultural Income-tax Act provides for certain deductions to be made in the computation of the 'agricultural income' of a person and its clause (j) provides for the deduction of any expenditure not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly or exclusively for the purpose of deriving the agricultural income. This clause corresponds to cl. (xv) of sub-s. (2) of s. 10 of the Income-tax Act. The proviso at the end of the various clauses of s. 5 states that no deduction shall be made under that section if it has already been made in the assessment under the Income-tax Act. This avoids a double deduction.

Now, explanation 2 added to s. 5 by the Amendment Act takes away the advantage of the provisions of cl. (j) of s. 5 with respect to the expenses incurred in the upkeep and maintenance of immature plants from which no agricultural income has been derived during the accounting year. We are not concerned in this case with the validity of this provision so far as agricultural income from land in which crops other than tea are raised. Here we are concerned with its validity with respect to its application to the income from tea plantations. Explanation 2 in s. 5 of the Agricultural Income-tax Act is obviously not consistent with the Explanation to sub-cl. (2) of cl. (a) of s. 2 of the Agricultural Income-tax Act and also the rule for computing agricultural income made under the Income-tax Act and results in making the agricultural income from tea plantations, for the purpose of the Agricultural Income-tax Act, to be different and higher than such agricultural income when calculated in accordance with the provisions of the Income-tax Act and rule 24. The different Provisions of an Act are to be construed in such manner as to make them harmonious. Explanation 2 to s. 5 should be so construed as makes it harmonious with Explanation to sub-cl. (2) of cl. (a) of s. 2 of the Agricultural Income-tax Act which provides a special definition, for agricultural income for tea plantations, such income being that portion of the income derived from land by the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purposes of the enactments relating to Indian Income-tax. Explanation 2, if applied to income from tea, would create an agricultural income which is not contemplated by the Income-tax Act and the Constitution and would then be void. Though wide in terms, Explanation 2, to s. 5 should therefore be construed not to apply to the computation of agricultural income derived from land by the cultivation of tea. Such a construction would make it harmonious with the Explanation to sub-cl. (2) of cl. (a) of s. 2 of the Agricultural Income-tax Act.

It is true, as urged for the respondents, that the State Legislature has full freedom to enact such provisions as it considers fit in respect of tax on agricultural income and that such power includes the power to enact for matters subsidiary and incidental to the taxation of agricultural income. We also agree that the State Legislature is free to provide the method of computation of the taxable agricultural income and is free to allow any particular deductions from the gross income as it considers fit. It is not disputed for the respondent that the power of the State Legislature to enact a law in respect of agricultural income relates only to such agricultural income as is defined in Art. 366 of the Constitution.

It is however urged that for the purpose of this definition, one has to look to the definition of 'agricultural income' in the Income-tax Act and not to the rules made thereunder. We do not agree. 'Agricultural income' as defined in the Constitution means 'agricultural income for the purpose of

the enactments relating to income-tax'. One such enactment is the Income-tax Act. Rule 24 of the Income-tax Rules has been made under the powers conferred by s. 59 of the Income-tax Act and has effect as if enacted in that Act. When s. 59 of the Income-tax Act provides for the rules made under that Act to prescribe the proportions of income from business and income from agriculture in the entire income derived in part from agriculture and in part from business, the proportion so prescribed must be taken to be prescribed by the Act. These rules were in existence in 1950 when the Constitution incorporated the definition of 'agricultural income' from the Income-tax Act by reference. The definition of the term was bound up with the Rules.

It has been further submitted for the respondents that cl. (xv) of sub-s. (2) of s. 10 of the Income-tax Act is a general provision and should give way to the special provision of the Agricultural Income-tax Act with respect to the deductions from the gross income for the purpose of computing the agricultural income. This cannot be, as we have to take the definition of 'agricultural income' from what it is in the Income-tax Act. The provisions of the Income-tax Act and the rules made thereunder will control the provisions of the Agricultural Income-tax Act enacted by a State Legislature.

The contention that the amount spent for the upkeep and maintenance of the immature plants till they become mature is in the nature of a capital expenditure is also not sound. It is a running expenditure and not of the nature of capital expenditure.

It is further contended that if such expenditure be held to be deductible expenditure, the proviso to rule 24 would be redundant. Again, we do not agree. The proviso allows the deductions of the cost of planting bushes in replacement of bushes which died or became permanently useless in an area already planted. It deals with the cost of planting bushes but not with the expenses incurred in the upkeep and maintenance of bushes already planted. These petitions are not with respect to the expenses incurred in the planting of immature tea bushes but are with respect to expenses incurred in the upkeep and maintenance of immature plants.

We therefore construe Explanation 2 to s. 5 of the Agricultural Income-tax Act not to extend to the computation of agricultural income derived from tea plantations and hold that in computing such agricultural income for the purpose of taxation under the Agricultural Income-tax Act, the Explanation to s. 2 of that Act must be kept in mind and the income must be taken to be as defined for the purposes of the enactments relating to Indian income-tax.

In view of our opinion it is not necessary to consider the other contention for the petitioner that Explanation 2 to s. 5 is discriminatory and contravenes the provisions of Art. 14 of the Constitution.

We therefore allow these petitions to this extent that we declare that Explanation 2 to s. 5 of the Agricultural Income-tax Act added by the Amendment Act does not cover the expenses incurred in the upkeep or maintenance of immature tea plants from which no income has been derived during an accounting year and that the agricultural income derived from tea plantations will be computed in accordance with the provisions of the Income-tax Act and the Income-tax Rule. We order that a writ be issued to the respondents restraining them, their agents and servants from enforcing or acting upon the provisions of Explanation 2 of s. 5 of the Agricultural Income-tax Act against the Karimtharuvi Tea Estate Ltd., Kottayam, viz., petitioner No. 1. We direct the respondents to pay the costs of petitioner No. 1, on eset.

Petitions allowed in part.

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