Travancore Rubber & Tea Co. Ltd. & Anr

Vs

State of Kerala & Anr.

Petitions Nos. 237 to 239 of 61

(S. K. Das, J. L. Kapur, A. K. Sarkar JJ)

01.11.1962

JUDGMENT

RAGHUBAR DAYAL, J. –

The Travancore Rubber and Tea Co., Ltd., hereinafter called the company, and one of its directors and members, have filed these petitions praying for a declaration that the Agricultural Income Tax (Amendment) Act, 1961 (Act IX of 1961), hereinafter called the Amendment Act, enacted by the Kerala State Legislature, is null and void and for the issue of appropriate orders to the respondents, viz., the State of Kerala and the Assistant Commissioner of Agricultural Income-tax, Kottayam, restraining them, their agents and servants from enforcing or acting upon the provisions of the aforesaid Amendment Act against the company and for refund of tax illegally assessed and collected from the company.

The business of the company consists of owning and managing rubber and tea estates situate in Kerala State. The company was assessed to agricultural income-tax under 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, with respect to its income derived from its rubber plantations in the accounting years 1950, 1951 and 1952, corresponding to the assessment years 1951-1952, 1952-53 and 1953-54. The assessing authority did not deduct the expenses incurred in the upkeep and maintenance of the immature rubber plants in the assessment of the income for the assessment year 1953-54, but allowed it in the assessment with respect to the other two years. At the request of the income-tax Department and of the company, cases were referred to the High Court of Kerala in accordance with s. 60 of the Agricultural Income-tax Act. The High Court decided against the company holding that such expenditure was not to be deducted in computing the agricultural income. The company came to this Court against the order of the High Court and this Court held, by its judgment dated December 15, 1960. The Travancore Rubber and Tea Co. Ltd. v. The Commissioner of Agricultural Income-tax, Kerala [[1961] 3 S.C.R. 279] that such expenses were allowable under s. 5(j) of the Agricultural Income-tax Act in computing the assessable income. Thereafter, the Governor of Kerala State promulgated an ordinance which was subsequently repealed by the Amendment Act of 1961. The Amendment Act was deemed to have come into effect from April 1, 1951. By its s. 2, Explanation 2 was added to s. 5 of the Agricultural Income-tax Act. That 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."

By s. 3, assessments previously made on the basis that such expenses were not to be allowed in computing agricultural income were deemed to be valid.

On February 22, 1961, the company, on the basis of the judgment of this Court, wrote to the Income-tax Commissioner for refunding the excess tax which had been realised. It got the reply, dated June 20, 1961, that its claim for refund was not maintainable so long as the orders of assessment were not varied or reversed by any competent authority and that the claim was also not tenable in view of the provisions contained in the Amendment Act.

The effect of the impugned Explanation is that expenses incurred on the upkeep and maintenance of immature rubber plants from which no agricultural income is derived during the accounting year are not to be deducted in computing the agricultural income.

The State Legislature derives power to tax agricultural income by virtue of Entry no. 46, List II, Seventh Schedule, of the Constitution. Article 336(1) defines 'agricultural income' to mean 'agricultural income as defined for the purpose of the enactments relating to Indian income-tax.' The definition in the Income-tax Act is incorporated by reference in the Constitution and serves to demarcate the bounds of 'agricultural income'. The relevant portion of the definition of 'agricultural income' in the Agricultural Income-tax Act is also in the same terms as the corresponding definition of 'agricultural income' in the Indian Income-tax Act, 1922. Section 5(j) of the Agricultural Income-tax Act provides that the agricultural income of a person shall be computed after making deductions of any expenditure (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 deriving the agricultural income.

The State Legislature has full powers to tax such income as income within the expression 'agricultural income' as defined in the Agricultural Income-tax Act, the definition being in conformity with the definition of 'agricultural income' in the Income-tax Act. It is for the State Legislature to provide such deductions from such income as it considers fit. Section 5 of the Agricultural Income-tax Act makes provisions for the deductions considered necessary by the Legislature. Explanation 2 added to s. 5 by the Amendment Act makes it clear that the Legislature was of opinion that no deduction should be allowed for the expenses incurred in the upkeep and of immature plants. Such an intention of the Legislature is manifest as Explanation 2 was enacted after the decision of this Court in the Travancore Rubber And Tea Co. Ltd., case [[1961] 3 S.C.R. 279] to the effect that such expenses are to be deducted in view of the provisions of cl. (j) of s. 5 of the Agricultural Income-tax Act.

We are therefore of the opinion that the State Legislature was competent to enact Explanation 2 to s. 5 and thereby provide for the non-deduction of the expenses incurred in the upkeep or maintenance of immature plants from which no income has been derived in the accounting year.

It is however contended that apart from the provisions of cl. (j) of s. 5, the word 'income' does not mean the gross receipts of a person but such receipts after deducting the necessary expenses incurred for the purpose of getting those receipts and that such had been the concept of the Constitution makers when they used the word 'income' in Entry No. 82 of List I and Entry No. 46 of List II, of the Seventh Schedule to the Constitution. In support of this contention reference was made to the legislative practice in the law of income-tax in England, to the dictionary meaning of the word

'income' and to certain meanings mentioned in Stroud's Judicial Dictionary and 'Words & Phrases' by Burrows. We do not consider it necessary to deal with this contention at length as this Court had occasion to consider this aspect thoroughly in Navinchandra Mafatlal v. The Commissioner of Income-tax, Bombay City [[1955] 1 S.C.R. 829]. Das J., as he then was, said at p. 833 :

> "Our attention has not, however, been drawn to any enactment other than fiscal statutes like the Finance Act and the Income-tax Act where the word 'income' had been used and, therefore, it is not possible to say that the critical word had acquired any particular meaning by reason of any legislative practice. Reference has been made to several cases where the word 'income' has been construed by the Court. What is, therefore, described as legislative practice is nothing but judicial interpretations of the word 'income' as appearing in the fiscal statutes mentioned above.... These guarded observations quite clearly indicate that they relate to the term 'income' or 'profit' as used in the Income-tax Act. There is no warrant for saying that these observations cut down the natural meaning of the ordinary English word 'income' in any way."

In discussing the natural and grammatical meaning of the word 'income', reference was made to its dictionary meaning and to the interpretation of the word in a wide sense in the United States of America and in Australia and then it was said at p. 837 :

> "The relevant observations of learned Judges deciding those cases which have been quoted in the judgment of Tendolkar J., quite clearly indicate that such wide meaning was put on the word 'income' not because of any particular legislative practice either in the United States or in the Commonwealth of Australia but because such was the normal concept and connotation of the ordinary English word 'income'. Its natural meaning embraces any profit or gain which is actually received."

It is therefore clear that the word 'income' in the relevant provisions of the Constitution has a very wide meaning and is not restricted in its meaning as suggested for the petitioner.

The next contention for the appellant is that Explanation 2 is discriminatory and contravenes the provisions of Art. 14 of the Constitution. There is nothing discriminatory in the provisions of Explanation 2 to s. 5. It is applicable to agricultural income derived from all crops except tea.

The question of the applicability of Explanation 2 to s. 5 to the agricultural income derive from tea plantations was before us for determination in The Karimtharuvi Tea. Estates Ltd., Kottayam v. The State of Kerala [[1963] Supp. 1 S.C.R. 823]. We have held in that case that Explanation 2 to s. 5 does not apply to the agricultural income from tea plantations. It was argued that if such be the view of this Court, the Explanation would bring about discrimination between agricultural income arising from rubber plantations and similar income arising from tea plantations and that therefore the Explanation would contravene the provisions of Art. 14 of the Constitution. It was, however, fairly conceded that in case the decision that this Explanation does not apply to agricultural income from tea plantations is based on the special provisions in the Income-tax Act and the rules made thereunder in connection with the computation of agricultural income from tea plantations, there would be no such discrimination. Our decision in The Karimtharuvi Tea Estates Case [[1963] Supp. 1 S.C.R. 823] is based on such special provisions.

The income derived from the sale of tea grown and manufactured by the seller is partly derived

from land by agriculture and partly from business. Such is not the case with the income derived from the sale of rubber. The provision for the computation of agricultural income from tea plantations has to be different and is to be found in the rules made under s. 59(3) of the Income-tax Act for determining the proportions of agricultural income and income from business in the entire income from the sale of tea. The difference in the provisions for the computation of agricultural income from tea plantations and from rubber plantations is therefore based on good reasons.

We hold that the provisions of Explanation 2 are not discriminatory against agricultural income from rubber plantations.

We therefore see no force in these petitions and, accordingly, dismiss them with costs, one set.

Petitions dismissed.

</html