Anglo American Direct Tea Trading Co. Ltd.

Vs

Commissioner of Agricultural Income-Tax, Kerala State, Trivandrum

Civil Appeals Nos. 936-939 of 1966

(R. S. Bachawat, J. M. Shelat, G. K. Mitter JJ)

10.01.1968

JUDGMENT

BACHAWAT, J. –

The appellants carry on the business of cultivation, manufacture and sale to tea. They own tea plantations in the State of Kerala. Some of them own tea plantations both within and outside the State. They are assessed to non-agricultural as well as agricultural income-tax. Civil Appeals Nos. 936 to 939 of 1966 arise out of the agricultural income-tax assessments of the Anglo American Direct Tea Trading Co., Ltd. under the Kerala Agricultural Income-tax Act, 1950 for the years 1958-59, 1959-60, 1960-61 and 1961-62. Civil Appeals Nos. 585 to 588 of 1966 arise out of the agricultural income-tax assessments of the Travancore Tea Estates Co. Ltd. for the years 1957-58, 1958-59, 1959-60 and 1960-61. Civil Appeals Nos. 589 to 591 of 1966 arise out of the agricultural income-tax assessments of the Southern India Tea Estates Co., Ltd. for the years 1957-58, 1958-59 and 1959-60. For all the assessment years, the central income-tax authorities computed the total tea income of the appellants and 40 per cent thereof representing the non-agricultural income was assessed to non-agricultural income-tax and the balance 60 per cent was left unassessed as agricultural income. The appellants produced before the Agricultural Income-tax Assistant Commissioner, Kerala, the central income-tax assessment orders, and requested him to take 60 per cent of the tea income computed by the central income-tax authorities as the gross income derived from agriculture. The Agricultural Income-tax Assistant Commissioner disregarded the central income-tax assessments, and on independent computation of the tea income determined to agricultural income of the appellants. The agricultural income so determined by the Agricultural Income-tax Assistant Commissioner was much higher than 60 per cent of the total tea income assessed by the central income-tax authorities. On appeal, the Deputy Commissioner of Agricultural Income-tax and Sales Tax, South Zone, Quilon held that the Agricultural Income-tax Officer could make an independent computation of the tea income and was not bound to adopt the assessment made by the central income-tax officer. On further appeal, the Kerala Agricultural Income-tax Appellate Tribunal, Trivandrum held that the Agricultural Income-tax Officer was bound to accept the computation of tea income by the central income-tax authorities. On the application of the respondents, the Appellate Tribunal referred the following question of law to the High Court under s. 60(1) of the Kerala Agricultural Income-tax, 1950 : "Whether the Agricultural Income-tax Officer is to follow the computation of income from tea made by the Central Income-tax Officer or whether he can find out the income from tea plantations applying the provisions of the Income-tax Act and make the assessment exercising his powers under the Agricultural Income-tax Act ? ". Following its earlier decision in Commissioner of Agricultural Income-tax, Kerala v. Perunad Plantations Ltd. [(1965) 56 I.T.R. 193], the High Court held that the agricultural Income-tax Officer was not obliged to accept the computation of the tea income made by the Income-tax Officer acting under the

Income-tax Act, and it was open to hims to compute the income independently applying the relevant provisions of the Income-tax Act and the Agricultural Income-tax Act. From these orders, the present appeals have been filed by special leave.

Before answering the aforesaid question, it is necessary to refer to the relevant constitutional and statutory provisions. Under Entry 46, List II, Seventh Schedule to the Constitution, the State Legislature is competent to make laws with regard to "taxes on agricultural income". Under Entry 82, List I, Parliament is competent to make laws with respect to "taxes on income other than agricultural income". In view of Art. 366(1), agricultural income means "agricultural income as defined for the purposes of the enactments relating to Indian income-tax." Articles 274(1) provides that a bill which seeks to vary this meaning requires the prior recommendation of the President. These provision of the Constitution correspond to Ss. 141(1), 311(2), Sch. VII, List I Entry 54, List II, Entry 41 of the Government of India Act, 1935. Section 2(1) of the Indian Income-tax Act, 1922 defined agricultural income. Section 10 provided for computation of income derived from business. Section 59 empowered the Central Board of Revenue to make rules which took effect as if enacted in the Act. Rules 23 and 24 of the Indian Income-tax Rules, 1922, framed under s. 59 provided for computation of the business profits where the income was derived partly from agriculture and partly from business. Under r. 23, the market value of the agricultural produce used as raw material in the business was deducted in computing the business profits. Rule 24 provided that "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, 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." These provisions correspond to Ss. 2(1), 28 to 44 and 295 of the Income-tax Act, 1961 and Rules 7 and 8 of the Income-tax Rules, 1962. Section 2(a) of the Kerala Agricultural Income-tax Act, 1950 defines agricultural income. The Explanation to s. 2(a)(2) provides that "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 purposes of the enactments relating to Indian Income-tax." Section 3 is the charging section. Section 2(s) read with Ss. 4, 5, 9 and 10 defines total agricultural income. Section 5 provides for computation of agricultural income after making certain deductions. The proviso to s. 5 lays down that "no deduction shall be made under this section if it has already been made in the assessment under the Indian Income-tax Act, 1922." Section 6 provides for assessment of income derived from lands partly within the State and partly without. Section 7 relates to the method of accounting. Section 17 deals with return of income. Section 18 provides for assessment of income. Sections 21 to 29, provide for assessments in special cases. Section 35 provides for assessment of income escaping assessment. Section 36 provides for rectification of mistakes. Section 67 empowers the Government to make rules. Rule 9 of the Kerala Agricultural Income-tax Rules, 1951, prescribes the deductions allowable under s. 5(1) for depreciation of buildings, machinery, plant and furniture in respect of tea factories. Rule 15 prescribes the method of apportionment of income derived from lands partly within the State and partly without.

In Karimtharuvi Tea Estates Ltd., Kottayam v. State of Kerala [[1963] Supp. 1 S.C.R. 823], this Court held that Explanation 2 to s. 5 of the Kerala Agricultural Income-tax Act added in 1961 disallowing certain deductions in the computation of agricultural income did not apply to computation of agricultural income derived from tea plantations. The reasons for this conclusion may be summarised thus : The definition of agricultural income in the Constitution and the Indian Income-tax Act, 1922 is bound up with r. 24 of the Income tax Rules, 1922. Income derived from

the sale of tea grown and manufactured by the seller is to be computed under r. 24 as if it were income derived from business in accordance with the provisions of s. 10 of the Indian Income-tax Act. The Explanation to s. 2(a)(2) of the Kerala Act adopts this rule of computation. Of the income so computed, 40 per cent is to be treated as income liable to income-tax and the other 60 per cent only is deemed to be agricultural income within the meaning of that expression in the Income-tax Act. The power of the State Legislature to make a law in respect of taxes on agricultural income arising from tea plantation is limited to legislating with respect to the agricultural income so determined. The legislature cannot add to the amount of the agricultural income so determined by disallowing any item of deductions allowable under r. 24 read with s. 10(2)(xv) of the Indian Income-tax Act. Explanation 2 to s. 5 of the Kerala Act if applied to income from tea plantations would create an agricultural income which is not contemplated by the Income-tax Act and the Constitution and would be void, and it should therefore be construed not to apply to the computation of income from tea plantations.

The question arising in these appeals is whether the agricultural Income-tax Officer making an assessment of agricultural income under the Kerala Agricultural Income-tax Act is bound to accept the assessment of the income which has already been made by the central income-tax authorities under r. 24 of the Income-tax Rules, 1922 read with s. 10 of the Indian Income-tax Act, 1922 or under r. 8 of the Income-tax Rules, 1962 read with Ss. 28 to 44 of the Income-tax Act, 1961. We think that this question should be answered in the affirmative. Income from sale of tea grown and manufactured by the seller is derived partly from business and partly from agriculture. This income has to be computed as if it were income from business under the Central Income-tax Act and Rules. 40 per cent of the income so computed is deemed to be income derived from business and assessable to non-agricultural income-tax. Having regard to the decision in Karimtharuvi Tea Estates Ltd., Kottayam v. State of Kerala [[1963] Supp. 1 S.C.R. 823], we are bound to hold that (a) the Explanation to s. 2(a)(2) of the Kerala Agricultural Income-tax Act adopts this rule or computation and (b) the balance 60 per cent of the income so computed is agricultural income within the meaning of the Central Income-tax Act and the Constitution. The agricultural income taxable under the Kerala Act is 60 per cent of the income so computed after deducting therefrom the allowances authorised by s. 5 of the Kerala Act in so far as the same has not already been allowed in the assessment under the Central Income-tax Act. There is no provision in the Kerala Act authorising the Agricultural Income-tax Officer to disregard the computation of the tea income made by the income-tax authorities acting under the Central Income-tax Acts. The Agricultural Income-tax Officer in making an assessment of agricultural income is bound to accept the computation of the tea income already made by the central income-tax authorities and to assess only 60 per cent of the income so computed less allowable deductions as agricultural income taxable under the Kerala Act. Where the agricultural income is derived from lands partly within the State of Kerala and partly outside the State, the portion of the income attributable to lands within the State is determined under s. 6 of the Kerala Agricultural Income-tax Act read with r. 15 of the Kerala Agricultural Income-tax Rules.

Our attention was drawn to the provisions of (a) Ss. 8(2), 24(1) proviso, 24(1) proviso, 25(4) and 25(5) of the Bengal Agricultural Income-tax Act, 1944, and Rules 7 and 8 of the Bengal Agricultural Income-tax Rules, 1944, (b) s. 8 of the Mysore Agricultural Income-tax Act, 1957 and Rule 6 of the Mysore Agricultural Income-tax Rules, 1957, (c) s. 8 of the Coorg Agricultural Income-tax Act, 1951, (d) the second proviso to s. 8 of the Assam Agricultural Income-tax Act, 1939 and Rule 5 of the Assam Agricultural Income-tax Rules, 1939, (e) Explanation 1 to s. 2(a)(2) of the Madras Plantations Agricultural Income-tax Act, 1955 and r. 7(1) of the Madras Plantations Agricultural Income-tax Rules, 1955 and (f) r. 5 of the Bihar Agricultural Income-tax Rules, 1949.

Under some Acts and Rules, the Agricultural Income-tax Officer is bound to adopt the assessment of the tea income made by the central income-tax authorities. But under some other Acts and Rules, he is authorised in specials cases to disregard this assessment and to make a fresh computation of the tea income. We express no opinion on the construction of these Acts and Rules. For the purpose of these appeals, it is sufficient to say that the Kerala Agricultural Income-tax Act and Rules do not confer upon the Agricultural Income-tax Officer the power to disregard the assessment of the tea income already made by the central income-tax authorities. We are unable to introduce by way of implication in a taxing statute a provision which requires explicit statement.

Difficulties may arise in making an assessment of agricultural income under the Kerala Agricultural Income-tax Act on the basis of the assessment of the tea income made by the Central income-tax authorities. The previous year under s. 2(o)(i) of the Kerala Act may be different from the previous year under the Indian Income-tax Act. This difficulty may be resolved by fixing the previous year for this class of income under s. 2(o)(ii) in conformity with the previous year under s. 2-A is not subject to the provisions of s. 2(o)(ii). Moreover, s. 22 authorises the assessment of income for the period from the expiry of a previous year to the probable date of the departure of the assessee from the State. It may be difficult to make an assessment under s. 22 or on the basis of the previous year under s. 2-A in the absence of any rule fixing the income for a broken part of the year with reference to an assessment made under the Indian Income-tax Act. In spite of these and other difficulties in the working of the Act, we are unable to agree with the decision in Commissioner of Agricultural Income-tax Kerala v. Perunad Plantations Ltd. [(1965) 56 I.T.R. 193] or to hold that the Agricultural Income-tax Officer can ignore the assessment of the tea income already made by the central income-tax authorities.

On behalf of the appellants, it was argued that the power to compute business income under r. 24 read with s. 10 of the Indian Income-tax Act having regard particularly to proviso (a) to sub-s. (2)(vi), the proviso to sub-s. 2 (vi-b), sub-clause (g) of the second proviso to sub-s. 2(xiv), sub-s (4-A) and the first proviso to sub-s. 5(a) of s. 10 must be exercised by the Central Income-tax Officer alone, that there is no provision in the Kerala Act conferring this power on the Agricultural Income-tax Officer and that therefore the assessment of agricultural income must wait until the assessment by the Central Income-tax Officer under r. 24 read with s. 10. This wider question does not arise for decision and is left open. In all the cases before us, the assessments by the Central Income-tax Officer were completed before the Agricultural Income-tax Officer proceeded to assess the agricultural income. For the purpose of these appeals, it is sufficient to say that the Agricultural Income-tax Officer acting under the Kerala Agricultural Income-tax Act, 1950 is bound to follow the assessment of income by the Central Income-tax Officer under r. 24 of the Income-tax Rules, 1922 and r. 8 of the Income-tax Rules, 1962 where such assessment has been made before the Agricultural Income-tax Officer proceeds to made the assessment under the Kerala Act. The question referred to the High Court is answered accordingly. We must not be understood to say that the assessment made by the Central Income-tax Officer under r. 23 of the Income-tax Rules, 1922 or r. 7 of the Income-tax Rules, 1962 is in any way binding on the Agricultural Income-tax Officer.

In Civil Appeals Nos. 585 to 588 of 1966 and 589 to 591 of 1966, the Agricultural Income-tax Officer made a surcharged of 5 per cent for the assessment year 1957-58 under the Kerala Surcharge on Taxes Act, 1957. On appeal, the Deputy Commissioner held that the surcharge was rightly made. On further appeal, the Appellate Tribunal held that the levy of the surcharge was illegal. On the application of the respondent, the Appellate Tribunal referred the following additional question of law to the High Court : "Whether on the facts and circumstances of the case the Tribunal is justified in holding that surcharge on agricultural income-tax cannot cannot be levied for the assessment year

1957-58 ?". The High Court answered this question in favour of the Revenue and against the assessee. This decision must be set aside. In Karimtharuvi Tea Estate Ltd. v. State of Kerala [[1966] 3 S.C.R. 93 : [1965] 60 I.T.R. 262], this Court held that no surcharge on agricultural income can be levied under the Kerala Surcharge on Taxes Act, 1957 in respect of the assessment year 1957-58. The second question is answered accordingly in favour of the assessee and against the Revenue.

In the result, the appeals are allowed with costs and the judgments of the High Court are set aside. The questions referred to the High Court are answered in favour of the appellants and against the Revenue as indicated in the body of this judgment. There will be one hearing fee.

Appeals allowed.

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