

State of Assam and Another

Vs

Deva Prasad Barua and Another

Civil Rules Nos. 212 and 213 of 1963

(A. N. Grover, V. Ramaswami – I JJ)

14.08.1968

JUDGMENT

GROVER J. -

These are two connected appeals by certificate from a common judgment of the High Court of Assam and Nagaland allowing two petitions under article 226 of the Constitution and setting aside the assessment made in respect of the respondents for the assessment years 1955-56 and 1957-58 under the Assam Agricultural Income-tax Act, 1939, hereinafter called the Act.

A general notice was issued under section 19(1) of the Act for submission of the return for the purpose of agricultural income-tax on April 13, 1955, for the assessment year 1955-56. According to the departmental authorities a notice was also issued under section 19(2) on September 16, 1955, to the respondents by the Agricultural Income- tax Officer for submission of a return for the same year which was followed by reminders sent on April 30, 1956, and April 15, 1958. It is, however, not disputed that the respondents themselves filed a return on May 31, 1958, relating to agricultural income for the assessment year 1955-56. On April 17, 1959, the Agricultural Income- tax Officer made an assessment order section 20(1) of the Act and a notice of demand was issued under section 33 on April 13, 1959. It is unnecessary to give the details about the proceedings relating to the assessment year 1957-58 in which the dates are naturally different but the position is identically the same. On June 4, 1962, the respondents

The High Court decided the petition in favour of the respondents primarily on the following considerations : (1) Once agricultural income has escaped assessment in any financial year then such income could be assessed within the period prescribed or laid down in section 30, namely, a period of three years by taking the steps indicated in that section. In the present case the agricultural income was received for the first year in the year 1954-55 and had to be assessed in the financial year 1955-56. Since no assessment had been made in that financial year it had escaped assessment. Thus section 30 was directly attracted. As the assessment was made on April 7, 1959, which was beyond three years from the expiry of the last date of the financial year in which the income had been assessed the assessment was invalid. (2) As no notice either under section 19(2) or under section 30 had been shown to have been served the assessment should have been made before the expiry of three years from the last date of the finan

Section 19 is almost in the same terms as section 22 of the Income-tax Act, 1922, hereinafter called the Income-tax Act. Section 19(1) reads as follows :

"The Agricultural Income-tax Officer shall, on or before the first day of May for the year

commencing 1st April, 1939 or any later day notified by Government in each year, give notice by publication in the press and otherwise in the manner prescribed by rules, requiring every person whose agricultural income exceeds the limit of taxable income prescribed in section 6 to furnish, within such period not being less than thirty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total agricultural income during the previous year."

Section 20 of the Act is similar to section 23 of the Income-tax Act. Section 30 which deals with escapement of income-tax is in the following terms :

"If for any reason any agricultural income chargeable to agricultural income-tax has escaped assessment for any financial year, or has been assessed at too low a rate (or has been the subject of undue relief under this Act), the Agricultural Income-tax Officer may, at any time within three years of the end of that financial year, serve on the person liable to pay agricultural income-tax on such agricultural income or, in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 19, and may proceed to assess or reassess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section."

Counsel for the appellant has raised two principal contentions before us. The first is that a notice had been served under section 19(2) of the Act on the respondents and therefore the reasoning of the High Court was based on an erroneous assumption that no such notice had been served. According to him the return filed in the High Court it had been clearly asserted that such notices had been issued followed by reminders. No counter affidavit, however, had been filed by the respondents in the High Court contradicting the statement in the return. Counsel further points out that the statement in the judgment of the High Court "but it is not disputed that the notices under section 19(2) of the Act had not, in fact, been served on the petitioner", is based on some misunderstanding or misapprehension. The counsel for the appellant did not make any concession on the point before the High Court and at the earliest opportunity, in the petition which was filed for leave under article 133 of the Constitution, this matt

The appeals are consequently allowed and the writ petitions are directed to be dismissed. The appellants will be entitled to one set of costs.

Appeals allowed.

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