

State of Orissa

Vs

Maharaja Shri B. P. Singh Deo

Civil Appeals Nos. 2258 and 2259 of 1966

(J. C. Shah, K. S. Hegde JJ)

01.12.1969

JUDGMENT

HEGDE, J. -

1. These appeals by certificate arise from the decision of the High Court of Orissa in Cases Nos. 82 and 83 of 1963 on its file wherein the High Court in exercise of its powers under Section 29(iii) of the Orissa Agricultural Income-tax Act (to be hereinafter referred to as the Act) set aside the judgment of the Agricultural Income-tax Appellate Tribunal as well as that of the Assistant Collector of Agricultural Income-tax, V

Sambalpur. The question for consideration is whether the High Court was justified in law in interfering with the order of the Tribunal.

2. These appeals relate to the assessment of the assessee under the Act for the years 1952-53 and 1953-54. The assessing authority, namely the Agricultural Income-tax Officer being unable to rely on the books of account produced by the assessee assessed him on the basis of best of judgment. For the assessment year 1952-53, he estimated his net income at Rs. 34,233/- and for the assessment year 1953-54 at Rs. 35,100/- and levied tax on that basis. Aggrieved by the decision, the assessee went up in appeal to the Assistant Collector of Agricultural Income-tax. The Assistant Collector not only dismissed the appeal of the assessee but enhanced the assessable income for the year 1952-53 by Rs. 30,000/- and for the year 1953-54 by Rs. 20,000/-, after giving notice to the assessee to show cause against the proposed enhancement. The Tribunal affirmed that decision.

3. The Assistant Collector, Agricultural Income-tax, called upon the assessee to produce the books mentioned in his notice. The assessee produced only some books out of those mentioned in the notice. The remaining books he did not produce. The Assistant Collector, for the reasons stated in his order, refused to place any reliance on the books produced. In the result he rejected the additional material placed before him. Thereafter he not only confirmed the assessment made by the Agricultural Income-tax Officer but enhanced the same as mentioned earlier. As regards the assessment made by the Agricultural Income-tax Officer, there is no dispute at present. The only question for consideration is whether the Assistant Collector of Agricultural Income-tax was justified in enhancing the assessment made by the Agricultural Income-tax Officer.

4. Apart from coming to the conclusion that the materials placed before him by the assessee were not reliable, the Assistant Collector has given no on which he has enhanced the assessment. The mere fact that the material placed by the assessee before the assessing authorities is unreliable does not empower those authorities to make an arbitrary order. The power to levy assessment on the basis

of best judgment is not an arbitrary power; it is an assessment on the basis of best judgment. In other words that assessment must be based on some relevant material. It is not a power that can be exercised under the sweet-will and pleasure of the concerned authorities. The scope of that power has been explained over and over again by this Court.

5. The Agricultural Income-tax Tribunal gave no reasons in its order for affirming the decision of the Assistant Collector. It appears to have been of the view that once the assessing authorities reject the material placed before them as being unreliable those authorities can proceed to levy whatever tax they may levy. It failed to bear in mind the scope of the power of the assessing authorities to levy assessment on the basis of best judgment. Therefore the Tribunal was clearly in error in confirming the decision of the Assistant Collector. Hence the High Court was justified in interfering with the order of the Tribunal.

6. In the result these appeals fail and they are dismissed with costs-hearing fee one set.

</html