Commissioner of Income-Tax, West Bengal

Vs

Hantapara Tea Co. Ltd.

Civil Appeal No. 79 of 1970

(K.S. Hegde, H.R. Khanna JJ)

03.04.1973

JUDGMENT

HEGDE J. -

This is an appeal by special leave. It relates to the assessment of the assessee for the assessment year 1961-62, for which the relevant previous year was the calendar year 1960.

The assessee is a tea company. Up to the assessment year 1950-51 the Agricultural Income-tax Officer was accepting the computation of the total income from the growth, manufacture and sale of tea made by the Income-tax Officer and taking 60 per cent, of the income determined as the agricultural income under rule 24 of the Income-tax Rules. On and from the assessment year 1951-52 the agricultural income-tax authorities started taking the market value of thatch, bamboo and fuel, etc., grown in tha tea estate and used in the tea business as 100 per cent, agricultural income and after deducting the cost of cultivation thereof, taxed the whole of the resulting income on the basis of the market value of those articles. So, from that assessment year the computation of the total income from tea by the income-tax authorities was varied by the Agricultural Income-tax Officer and the assessee had to pay tax on a total income which was more then the income disclosed in the profit and loss account.

For the assessment year 1961-62 the assessee-company was assessed to income-tax under rule 24 of the Income-tax Rules, on its profits as per its profit and loss account with certain modifications, by the Income-tax Officer. In the expense debited in its accounts, only the expenses for raising thatch, bamboo, fuel, etc., grown in the tea estate and used in the tea business were included.

Before the Appellate Assistant Commissioner, the assessee raised the contention that the market value of agricultural produce grown in the tea estate and utilised by the assessee in the tea business, which had been assessed at 100 per cent. to agricultural income-tax must be taken into consideration in the computation of allowable expenditure. In support of that contention reliance was placed on the decision of this court in the case of Dooars Tea Co. Ltd. v. Commissioner of Agricultural Income-tax. The Appellate Assistant Commissioner accepted that contention and directed the Income-tax Officer to modify the assessment accordingly. In appeal by the revenue the finding of the Appellate Assistant Commissioner was accepted by the Tribunal. Thereafter, at the instance of the revenue, the following question was referred to the High Court for its opinion :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the decision of the Supreme Court in Dooars Tea Co. Ltd. was applicable to the computation of the assessee's total income under the provisions of

the Indian Income-tax Act, 1922, and in directing the Income-tax Officer to make a fresh assessment according to law in the light of the aforesaid decision of the Supreme Court ?"

The High Court answered that question in the affirmative and in favour of the assessee. Hence this appeal by the revenue.

It is true that the question formulated by the Tribunal does not accurately bring out the real contention between the parties is whether the assessee is entitled to the market value of the agricultural produce grown by it but utilised for the purpose of tea business. Dooars Tea Co. Ltd.'s case related to the levy of agricultural income-tax. The fact of that case are as follows :

The assessee, who is a tea grower, grew n its estate bamboo, thatched grass, fuel timber, etc., and utilised the same for tea business. At the time of the assessee's assessment under the Bengal Agricultural Income-tax Act the assessee contended that only the cost of growing the produce in question should be taken into consideration and not its market value as the same was used for the purpose of the assessee's tea business. This contention was rejected by the revenue and this court upheld the decision of the revenue. This court came to the conclusion that the agricultural income should be computed on the basis of the market value of bamboos, thatched grass and fuel timber, etc., in accordance with rule 4(2) of the Bengal Agricultural Income- tax Rules. The ratio of that decision is that in the matter of computing the agricultural income it was not necessary that the agricultural produce should be sold and profit or gain made from such sale before it is considered as a agricultural income. It is sufficient if the assessee gets any benefit received by the assessee and not the cost incurred by the assessee for raising the agricultural produce in question. If the assessee has to pay agricultural income- tax on the market value of the agricultural produce raised in his estate and used in his tea business it stands to reason that while determining deductible expenditure incurred for the purpose of his business, the same rule, viz., the market value of the produce use for the tea business, should be taken into consideration, because in terms of money what he expended was the market value of the proof used in connection with his business. The fact that he used his own goods is immaterial.

Now, turning back to the question referred to the High Court, even though the question is not properly framed, the question is sufficiently wise to decide the real pint in issue. The latter part of the question covers the point that calls for decision. In that view there is no need either to reframe the question or to direct the Tribunal to submit a separate statement of case.

For the reasons mentioned above this appeal fails and the same is dismissed with costs.

Appeal dismissed.

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