

Commissioner of Agricultural Income Tax, Trivandrum

Vs

Kerala Estate Mooriad Chalapuram

Civil Appeal No. 1396 of 1974

(R. S. Pathak, Sabyasachi Mukharji JJ)

15.07.1986

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Kerala disposing of an Agricultural Income Tax Reference and answering the following question in favour of the assessee and against the revenue :

Whether on the facts and circumstances of the case the Tribunal was justified in holding that the amount of Rs 33,747.09 is not agricultural income for the assessment year 1964-65.

2. The assessee Kerala Estate Mooriad Chalapuram, is a broad description of seven persons possessing the status of tenants-in-common under the Kerala Agricultural Income Tax Act, 1950. They owned an estate from which they derived agricultural income liable to be assessed in the year 1963-64. The assessee followed the mercantile system of accounting. In assessment proceedings for the year 1963-64, the assessee claimed a deduction of Rs 33,747.09 from their agricultural income on the ground that it was payable towards interest on a loan of Rs 4,00,000 taken by them from M/s. Associated Planters Ltd., Calicut. The deduction was allowed. During the accounting period relating to the assessment year 1964-65 M/s. Associated Planters Ltd. waived payment of the interest of Rs 33,747.09, and accordingly the amount was credited to the revenue accounts of the assessee. The assessing authority brought the amount to tax. The case was ultimately carried in second appeal to the Tribunal on the question whether the sum of Rs 33,747.09 credited in the relevant previous year could be assessed to tax for the year 1964-65. The Tribunal, by majority, held that it was not agricultural income. At the instance of the Commissioner of Agricultural Income Tax, Kerala, a reference was made to the High Court of Kerala under sub-section (2) of Section 60 of the Kerala Agricultural Income Tax Act on the question of law set forth earlier, and the High Court has answered the question in the affirmative. The High Court has taken the view that it was immaterial that the assessee followed the mercantile system of accounting, because the case was not one of an actual or constructive receipt or any receipt at all but only one of remission. According to the High Court a remission could not give rise to a credit item in the accounts of the assessee, and that what had been given up by the creditor in favour of the assessee or returned to them could not constitute the income of the assessee. The High Court observed that what was returned to the assessee had nothing to do with the activities of the assessee, and that it did not arise from the agricultural operations carried on by the assessee.

3. The Kerala Agricultural Income Tax Act, 1950 provides for the levy of tax on agricultural income

in the State of Kerala. Section 3 of the Act provides that agricultural income shall be charged for each financial year on the total agricultural income of the previous year of every person at the rates specified in the Schedule. Section 4 defines what 'total agricultural income' is, and Section 5 details the deductions to be made in computing the agricultural income. Clauses (e), (g), (h) and (i) of Section 5 refer to interest paid by an assessee in different kinds of cases. The interest in all these cases has to be deducted from the agricultural income of a person before the levy is imposed. It is not disputed that the interest allowed to be deducted in the assessment of the present assessee falls under one of those clauses and was, therefore, rightly deducted in computing their agricultural income. The question is whether the interest waived by M/s. Associated Planters Ltd. and credited to the revenue accounts of the assessee can be regarded as their agricultural income.

4. There has been serious controversy through the years on the question whether an amount refunded or remitted constitutes the income of an assessee. In CIT v. Lakshamma ((1964) 52 ITR 789 (Mys)), the Mysore High Court took the view that a refund received by the assessee in respect of excise fees payable by him amounted to a revenue receipt liable to tax. In that case, however, the High Court specifically made a distinction between cases of refund and cases of remission, and it appears to have taken the position that an amount received as remission of duty could not be treated as a revenue receipt, while an amount received by way of refund could be. In the judgment under appeal, the High Court of Kerala noticed that decision and after exhaustively surveying several decisions came to the conclusion that the remission in the present case could not amount to agricultural income. We think that the view taken by the High Court in the case before us is right. The remission cannot, in our opinion, be considered as amounting to the receipt of agricultural income. What was allowed to be deducted from the total agricultural income of the assessee was interest pursuant to Section 5 of the Act. It was a deduction made permissible by the Act. To be regarded as taxable in the hands of the assessee the amount which was the subject of remission must be capable of being described as agricultural income. As the High Court has observed in the present case "what was returned to the assessee has nothing to do with the activities of the assessee, it does not arise from business nor does it arise from agricultural operations when the assessee is an agriculturist."

5. In order to eliminate such a controversy in cases falling under the Indian Income Tax Act, 1922 sub-section (2-A) was added in Section 10 of that Act, whereby a receipt such as this was expressly made liable to tax by legal fiction as profits and gains of business, profession or vocation. Sub-section (2-A) was inserted in Section 10 in 1955. Before that Chagla, C.J., speaking for the Court in Mohsin Rehman Penkar v. CIT ((1948) 16 ITR 183, 185 (Bom)) had observed :

It is impossible to see how a mere remission which leads to the discharge of the liability of the debtor can ever become income for the purposes of taxation.

This observation was noted by the Mysore High Court in CIT v. Lakshamma ((1964) 52 ITR 789 (Mys)), and appears from what was said by them to have received the tacit approval of the learned Judges. It was made the basis for distinguishing the case before them from that decided by the Bombay High Court.

6. We may point out in regard to sub-section (2-A) of Section 10 of the Indian Income Tax Act, 1922 that it has been replaced by an even wider provision as sub-section (1) of Section 41 of the Income Tax Act, 1961. No provision of that nature finds place in the Kerala Agricultural Income Tax Act.

7. The appeal fails and is dismissed with costs.

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