**SUPREME COURT OF INDIA**

Tata Tea Ltd.

Vs.

State of Kerala

Writ Petns.Nos. 5409-10, 5411-12 of 1980

(R. S. Pathak, C.J.I. and M. H. Kania, J.)

05.05.1988

**JUDGEMENT**

**KANIA, J.:-**

1. These writ petitions are filed by Public Limited Companies growing and manufacturing tea in the States of West Bengal and Kerala respectively. Although, there are some differences in the facts, the material facts are largely common and the questions raised in the petitions can be fairly regarded as common questions of law. They are, therefore, being disposed of together by this common judgment.

2. The petitioners in Civil Writ Petitions Nos. 5409- 10 of 1980 are the Tata Tea Limited and a shareholder of the said Company. These petitions are directed against the State of a West Bengal, Commissioner of Agricultural Income-tax of West Bengal, West Bengal Agricultural Income-tax Officer, Calcutta Range-I, Union of India and Income-tax Officer, O-Ward, Companies District-II, Calcutta. The petitioners in Civil Writ Petitions Nos. 5411-12 of 1980 are also the Tata Tea Limited and a shareholder thereof. The respondents are State of Kerala, Commissioner and Assistant

Commissioner of Agricultural Income-tax at Kerala, Union of India and the concerned Income-tax Officer. The petitioners in other writ petitions are Tea Companies and shareholders thereof and the respondents are ranged on similar lines as above.

3. The petitioners are Public Limited Companies growing as well as manufacturing tea and selling the same. As far as the petitions directed against the State of West Bengal are concerned, the challenge therein is to the constitutional validity of Sections 3 and 5 of the Bengal Agricultural Income-tax (Amendment) Act, 1980. The Bengal Agricultural Income-tax Act, 1944 provides for the levy and collection of agricultural income-tax in the then Province of Bengal, the predecessor Province to the present State of West Bengal and, after the coming into force of the Constitution, the State of West Bengal. By the said amending Act, for the first time, sub-sections (2) and (2A) of Section 8 of the Bengal Agricultural Income-tax Act were omitted and always deemed to have been omitted. It is alleged by the petitioners that as a result of the omission of sub-sections (2) and (2A) of Section 8 of the Bengal Agricultural Income-tax Act, 1944, the State Legislature has sought to assume the power, -competence and jurisdiction to impose agricultural income-tax on the entire income derived from the sale of tea grown and manufactured by a seller and has thereby transgressed the constitutional limitations contained in Article 246(3) of the Constitution of India read with Entry 46 of List II of the Seventh Schedule to the Constitution of India.

4. In the aforesaid Writ Petitions Nos. 5409-10 of 1980 the process of manufacturing tea has been described in some detail. To put it very briefly, the green tea grown by the tea growers is withered by exposure to air under natural or controlled conditions. Certain machinery and equipment is required for the aforesaid process. The object of withering is partial dehydration of shoots to make them leathery and flaccid for rolling and chemical changes. The change brought about is the increase in caffeline, soluble sugars and amino acids. The second process involves rupture and distortion of tea shoots into smaller sizes to allow mixing of enzymes and substrates. This is known as rolling. The process of rolling is carried out by mechanical bruising, tearing, cutting, crushing, breaking and twisting tea leaves for which crank roller/rotorvane/C.T. C. machines are employed. The third process is of fermentation which involves exposure to air under controlled temperature. For this the equipment required is fermentation chamber/trags/floor/troughs. As a result of this process, the colour of tea changes from green to coppery. The next process is of drying or roasting for stoppage of fermentation; dehydration to ensure keeping the quality of the product. Drying or roasting has to be done at a temperature of 30 degrees celsius and humidity exposure to blast of hot air in a counter-currnet-dryer. The equipment required for this is a conventional tea dryer. As a result of this process, the moisture in the tea is reduced to 4 per cent and it becomes black in colour. This manufacturing process is applied to tea leaves in a factory which is situated within the garden area owned by the petitioner and licensed under the Factories Act. It is averred that the carrying out of the aforesaid processes is a specialised operation involving the application of modern methods of bio-chemical engineering. The cleaning of the tea is then done with machines according to various sizes like broken pekoe, broken orange pekoe, dust, churmani dust and so on. There are also other brands of tea produced by the aforesaid process. It is needless to consider these processes in detail except to state that they are quite elaborate and, in the cases before us, valuable machinery is being used for carrying out these processes which are carried out in factories.

5. The case of the petitioners is that the income derived from the sale of tea grown and manufactured as aforesaid is derived partly from agriculture and partly from manufacture. Under the Indian Income-tax Act, 1922 (referred to hereinafter as "the Act of 1922") and the Rules framed thereunder the income derived from the sale of tea grown and manufactured by a seller, has to be computed in the manner laid down in Rule 24 of the Income-tax Rules, 1922 and 40 per cent of the income so computed is treated as income other than agricultural income and the remaining 60 per cent is treated as agricultural income. In respect of the income other than agricultural income, it is the Union Parliament which has and before the coming into force of the Constitution the Central Legislature which had the power to legislate in respect of taxes and in respect of the agricultural income, the legislative power in respect of taxation was left to the provinces under the Government of India Act, 1935 and to the States under the Constitution. The Bengal Agricultural Income-tax Act, 1944 enacted by the Provincial Legislature of Bengal defined agricultural income in identical terms as contained in Section 2(l) of the Act of 1922. The Bengal Agricultural Income-tax Act further provided by subsection (2) of Section 8 that notwithstanding anything contained (in) that Act, in the case of tea grown in West Bengal and sold by the grower himself or his agents after manufacture, the agricultural income derived therefrom shall be deemed to be that portion of the income computed as aforesaid under the Act of 1922 on which income-tax was not payable under the Act of 1922 and agricultural income-tax was levied on the whole of such agricultural income. As a result of this, the position was that the income of an assessee who grew, manufactured and sold tea in West Bengal was computed in the manner laid down in the Act of 1922 read with Income-tax Rules, 1922 and agricultural income-tax was levied only in respect of 60 per cent of that income. On coming into force of the Income-tax Act, 1961 which replaced the Act of 1922, the position remained the same. The Income-tax Act, 1961 (referred to hereinafter as "the Act of 1961") came into effect from 1st April, 1962. The definition of agricultural income in the Act of 1961 is contained in subsection (1) of Section 2 of that Act and is in pari materia with the definition of the said term in the Act of 1922. Rule 8 of the Income-tax Rules, 1962 is in pari materia with Rule 24 of the Income-tax Rules, 1922. As a result of this even after the Act of 1961 and the Income-tax Rules, 1962 came into force, a State Legislature could only legislate in respect of taxes regarding that part of the income computed by the Income-tax Officer concerned as aforesaid which is treated as agricultural income, namely, 60 per cent of it.

6. In 1979, the Legislature of the State of West Bengal enacted the Bengal Agricultural Income-tax (Amendment) Act, 1979. By the said Amendment Act, sub-section (2A) was added after sub-section (2) in Section 8 of the Bengal Agricultural Income-tax Act, 1944. Very briefly put, the said sub-section (2A) gave powers to the Agricultural Income-tax Officer to make the computation of income derived from tea in cases where it had not been computed for the purposes of assessment of income-tax under the Act of 1961 or, although computed, the assessment under the Act of 1961 had been annulled or set aside under that Act and no order of assessment under Section 25 had been made within six years from the end of the year in which the agricultural income was first assessable in the manner and subject to the limitations and conditions set out in the said sub-section. It is not really necessary for us to consider this provision further in the view which we have taken. Moreover, this Amendment Act remained in force only for the period 1979-80 after which it was replaced by the Amendment Act of 1980. The West Bengal Legislature in 1980 amended the Bengal Agricultural Income-tax Act by the Bengal Agricultural Income-tax (Amendment) Act, 1980. By the said Amendment Act, subsections (2) and (2A) of S. 8 of the Bengal Agricultural Income-tax were deleted and always deemed to have been deleted as already pointed out and Section 25(4) of that Act was omitted. Section 7 of the Amendment Act provided for cases where the assessment under

the Act of 1961 of any agricultural income derived from tea was made before coming into force of the Amendment Act but we are not concerned with that section. Under the petition, the challenge is to the validity of Sections 3 and 5 of the Amendment Act whereby the aforesaid sub-sections (2) and (2A) of Section 8 were omitted with retrospective effect and Section 25(4) was omitted. It is submitted in the petition that, from the speech of the Finance Minister at the time of introducing the Bill for carrying out the amendments, as well as from the affidavit in reply filed by the State of West Bengal, it is clear that the entire object of the amendments was to subject to the levy of agricultural income-tax, the entire income derived by an assessee from the sale of tea grown and manufactured by him.

7. We come next to the petitions against the State of Kerala. Under the Agricultural Income-tax Act, 1950 passed by the Legislature of the State of Kerala, "agricultural income" is defined in the same manner as under the Act of 1922 and there was an Explanation after clause (2) in Section 2(a) stating that agricultural income derived from land used for agricultural purposes by the cultivation of tea leaves 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 enactments relating to the Indian Income-tax Act. By an Act called "The Agricultural Income-tax (Amendment) Act, 1980" (Kerala Act No. 17 of 1980), the Kerala Agricultural Income-tax Act was amended and the said Explanation was deleted. It was submitted that this deletion was made with a view to make the entire income earned by an assessee who grew and manufactured tea from the sale of tea subject to the levy of agricultural income-tax. Here again, it was pointed out that, from the speech of the Finance Minister at the time of introducing the Bill concerned and the stand taken in Court by the State of Kerala, it was clear that the entire object of the amendment was to make the entire income derived by an assessee as afore-stated. liable to the levy of agricultural income-tax. These submissions were adopted by the learned Counsel who appeared for the other petitioners and by Mr. Manchanda who appeared for the Union of India. It is submitted by Dr. Paul, learned Counsel for the Tata Tea Company that the aforesaid amendments, in so far as they purport to confer power on the respective legislatures of the State of West Bengal and the State of Kerala to legislate regarding taxes on the income from the sale of tea grown and manufactured by an assessee in excess of 60 per cent of such income computed in the manner prescribed under the law relating to income-tax are void and of no legal effect as they are beyond the legislative competence of the respective legislatures of the States of West Bengal and Kerala respectively in view of the provisions of Article 246 of the Constitution read with Entry 82 in List I and Entry 46 in List II in the Seventh Schedule to the Constitution and the relevant provisions of the law relating to income-tax.

8. Dr. Paul, learned Counsel for Tata Tea Company and Tata Finlay Company further submitted that, if the entire income derived from the sale of tea grown and manufactured by an assessee were to be regarded as agricultural income, the result would be that the Parliament would not have any competence to legislate in respect of taxes on the same with the result that the provisions of the Act of 1922 and the Act of 1961 imposing the levy of income-tax on any part of such income would become ultra vires. This particular submission was not supported by Dr. Gauri Shankar who appeared for petitioner in W.P. No. 358 of 1984 and was opposed by Mr. Manchanda who appeared for the Union of India.

9. As far as the State of West Bengal and the State of Kerala are concerned, they are represented by learned Counsel, Mr. Potti and Mr. Tapas Ray respectively. It was urged by Mr. Potti and Mr. Ray that Art. 366(l) of the Constitution merely states that the term "agricultural income" has the same meaning as given to it in the enactments relating to income-tax, that the definition of the said term in the Act of 1922 and the Act of 1961 did not prescribe that only a particular portion of the income derived by an assessee from the sale of tea grown and manufactured by him can be regarded as agricultural income and hence it was open to the State legislatures concerned to levy agricultural income-tax on such entire income. Alternatively, it was submitted by them that, in any event, in law, the entire income derived from the sale of tea by an assessee growing and manufacturing tea must be held to be agricultural income in view of the decision of the Supreme Court in the case of Bist and Co. (Sons ?) (AIR 1980 SC 169) (which we propose to refer to more particularly hereinafter) and hence the State Legislature was entitled to levy agricultural income-tax on the same. The Parliament had no power to legislate in respect of such income.

10. In order to examine the correctness of these contentions, certain relevant provisions of law may be noted at this stage. Under Article 246(1) of the Constitution, Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I in the Seventh Schedule to the Constitution which is referred to in the Constitution as the "Union List". Clause (3) of that Article prescribes that a Legislature of a State has exclusive power to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule (Referred to in the Constitution as the "State List"). Clause (2) of the said Article provides that both Parliament and State Legislatures have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule called the "Concurrent List". Entry 82 in List I of the Union List reads "taxes on income other than agricultural income". Entry 46 of List II (State List) reads "taxes on agricultural income". Article 366 of the Constitution contains definitions and sub-Article (1) thereof reads as follows :

"Agricultural income means agricultural income as defined for the purposes of the enactments relating to Indian Income-tax Act."

11. The material portion of sub-section (1) of Section 2 of the Act of 1922 (Indian Income-tax Act, 1922) defines agricultural income as follows:

"Agricultural income means:

(a) any rent or revenue derived from land which is used for agricultural purposes, and either assessed to land-revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such;

(b) any income derived from such land by

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver, of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

x x x x x"

12. Clause (c) of the said sub-section and the Proviso thereto are not material for our purposes.

13. Section 59 of the Act of 1922 deals with the powers to make rules. Sub-section (1) confers power on the Central Board of Revenue, subject to the control of the Central Government, to make rules for carrying out the purposes of the Act of 1922 and for the ascertainment and determination of any class of income. The material portion of sub-section (2) of that section runs as follows :

"Without prejudice to the generality of the foregoing power, such rules may

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(a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of

(i) incomes derived in part from agriculture and in part from business;

x x x x x"

14. Sub-section (5) of Section 59 reads as follows :

Rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in thisAct."

15. Rule 24 of the Income-tax Rules, 1922 deals with the computation of income derived from the sale of tea grown and manufactured by the seller and that rule runs as follows :

"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."

16. Sub-section (1) of Section 2 of the Act of 1961 (Income-tax Act, 1961) defines the term "agricultural income". The material portion of that definition is similar to the definition contained in the Act of 1922 and runs as follows:

"(i) "agricultural income" means

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be

taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this subclause".

17. Clause (c) of the said sub-section is not material for our purposes. Section 295 of the Act of 1961 deals with the power to make rules. The relevant portion of that section runs as follows :

"(1) The Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters

(a) the ascertainment and determination of any class of income;

(b) the manner in which and the procedure by which the income shall be arrived at in the case of

(i) income derived in part from agriculture and in part from business;

x x x x x"

The Board referred to in Section 295(1) is the Central Board of Direct Taxes.

18. Section 296 provides inter alia that a rule framed under Section 295 shall be laid, as soon as may be after the rule is made, before each House of Parliament and shall have effect subject to any modification or deletion made by both Houses of Parliament. Rule 7 of the Income-tax Rules, 1962 made under Section 295 of the Act of 1961 deals with income which is partially agricultural and partially from business. Rule 8 deals with income from the manufacture of tea and the said rule runs as follows :

"(1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent of such income shall be deemed to be income liable to tax.

(2) 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, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (30) of Section 10, is not includible in the total income."

19. Section 7 of the Bengal Agricultural Income-tax Act, 1944 deals with the computation of tax and allowances under the head "AGRICULTURAL INCOME FROM AGRICULTURE" . Section 8 of that Act deals with the computation of tax on mixed income. Sub-section (1) of Section 8, very briefly stated, prescribes that in case of such mixed income which is partly agricultural and is assessable under the said Bengal Act and partly chargeable under the Indian Income-tax Act of 1922 under the head "Business", agricultural income-tax would be payable by an assessee in respect of the market value of agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised by him as raw material in such business or the sale receipts of which are included in the accounts of the business subject to allowances permissible under that Act. Clause (a) of the Proviso to that sub-section makes it clear that if, for the purposes of assessment of income-tax under the Act of 1922, the market value of the produce had been determined that would be accepted as market value also for the said Bengal Act. Clause (b) of the Proviso deals with common charges on agricultural income and income chargeable under the Act of 1922. The material portion of sub-sections (2) and (3) of the said section ran as follows :

"(2) Notwithstanding anything contained in this Act, in the case of tea the plant Camellia thea (Linn.) grown in West Begal and sold by the grower himself or his agent after manufacture, the agricultural income derived therefrom shall, as long as for the purposes of assessment of income-tax under the Indian Income-tax Act., 1922, the income derived therefrom is computed under that Act in such manner as to include agricultural income, be deemed to be that portion of such income as so computed on which income-tax is not payable under that Act, and agricultural income-tax at the rates specified in the Schedule shall be payable on the whole of such agricultural income as so computed

x x x x x"

(3) For the purpose of the assessment of agricultural income-tax under this section or any rule made thereunder a certified copy of an order of an assessment under the Indian Income-tax Act, 1922, or a

certified copy of an order of any appellate or revising authority or of the High Court or of the Supreme Court altering or amending such order of assessment under the provisions of that Act shall be conclusive evidence of the contents of such order."

20. The Bengal Agricultural Income-tax (Amendment) Act, 1980 (referred to hereinafter as "the Bengal Amendment Act of 1980") was passed by the Legislature of the State of West Bengal and published in the Gazette on 31st March, 1980. By Section 2 of that Act, Section 7A was inserted into the Bengal Agricultural Income-tax Act, 1944 and that section runs as follows :

"7A : Notwithstanding anything to the contrary contained in this Act, in the case of an assessee being a company or a firm or other association of persons, the agricultural income of such assessee shall be computed in accordance with the method of accounting regularly employed by such assessee for such computation :

Provided that if, in any case, the method of accounting as aforesaid is such that, in the opinion of the Agricultural Income-tax Officer, the agricultural income cannot be computed, the computation shall be made on such basis and in such manner as the Agricultural Income-tax officer may determine."

21. Section 3 of the Amendment Act of 1980 provides that sub-sections (2) and (2A) of Section 8 of the Bengal Act of 1944 shall be omitted and shall be always deemed to have been omitted. Section 7 of the Bengal Amendment Act of 1980 runs as follows :

"(7) Notwithstanding any judgment, decree or order of any court, tribunal, or authority to the contrary, where any assessment under the Income-tax Act, 1961 of any agricultural income derived from tea has been made before the coming into force of this Act, the proceeding relating to such assessment may be taken and continued under the principal Act as if this Act had not been passed."

22. It may be mentioned here that by the Bengal Agricultural Income-tax (Amendment) Act, 1979, sub-section (2A) was inserted after sub-section (2) in Section 8 of the Bengal Act of 1944. That Act remained in force only for a period of one year. The material portion of sub-section (2A) ran as follows :

"(2A) Where the computation of the income derived from tea has not been completed for the purposes of assessment of income-tax under the Income-tax Act, 1961, or where such computation has been completed but the assessment under the Income-tax Act, 1961, has been annulled or set aside under that Act and no order of assessment under Section 25 has been made within six years from the end of the year in which the agricultural income was first assessable, the Agricultural

Income-tax Officer shall, notwithstanding anything to the contrary contained in this Act, assess the agricultural income derived from tea in such manner and within such period as may be prescribed and shall determine the sum payable by the assessee on the basis of such assessment :

x x x x x"

23. In the State of Kerala, agricultural income-tax was sought to be imposed by the Agricultural Income-tax Act, 1950 passed by the Legislature of the State of Kerala. The definition of the term "agricultural income" is contained in sub-section (a) of Section 2 of the Kerala Agricultural Income-tax Act. the said definition is in line with the definition of the said term under the Act of 1922. There was an Explanation after clause (2) of subsection (a) of Section 2. The material part of sub-section (a) runs as follows :

"2(a) "Agricultural income" means

(1) any rent or revenue derived from land which is used for agricultural purposes;

(2) any income derived from such land by

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken no market or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

x x x x x"

24. The Explanation referred to above, which followed clause 2 ran as follows :

"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."

25. By Section 2 of the Agricultural Income- tax Amendment Act, 1980 (Kerala Act 17 of 1980), the said Explanation was omitted with effect from 1-4-1980. the affidavit in reply filed on behalf of the State of Kerala as well as the speech of the Finance Minister of the said State at the time of introducing of the Bill which was passed as the Kerala Amendment Act of 1980, make it clear that the intention behind deleting of Explanation was to make the entire income earned by a person from the sale of tea grown and manufactured by him in the State liable to the levy of agricultural income-tax.

26. The main question which we have to consider is whether the aforesaid provisions in the Bengal Amendment Act of 1980 are in excess of the legislative competence of the West Bengal State Legislature. It will also have to be considered whether by reason of the deletion of the aforesaid Explanation effected by the Kerala Amendment Act of 1980 the definition of the term "agricultural income" in sub-section (a) of Section 2 of the Kerala Agricultural Income-tax Act became void as in excess of the legislative competence of the State Legislature.

27. A perusal of Entry 82 of List I in the Seventh Schedule and Entry 46 in List II makes it clear the respective legislatures of the State of West Bengal and the State of Kerala could pass laws imposing taxes only in respect of agricultural income; and in respect of income other than agricultural income, it is only Parliament which has the power to legislate in respect of taxes on such income. Sub-article (1) of Article 366 of the Constitution states that "agricultural income" means such income as is defined as "agricultural income" for the purposes of enactments relating to Indian income-tax. It is significant that the words used are not "as defined by the enactments relating to Indian income-tax" but "as defined for the purposes of the enactments relating to Indian income-tax." (Emphasis supplied). We have already set out the definition of the term "agricultural income" under the Act of 1922 as well as that in the Act of 1961 which replaced the Act of 1922. If these definitions are read by themselves, it would be difficult to say that there is any conflict between them and the definition of the term "agricultural income" contained in the Bengal Agricultural. Act, 1944 after its amendment in 1980 or the definition of the said term in the Kerala Agricultural income-tax Act of 1950, even after the deletion of the aforesaid Explanation. However, it must be realised that Section 59 of the Act of 1922 and Section 295 of the Act of 1961 both deal with rule making powers. Under the Act of 1922 that power is given to the Central Board of Revenue and under the Act of 1961 that power is given to the Central Board of Direct Taxes. Clause (a) of subsection (2) of Section 59 of the Act of 1922 specifically confers powers on the Central Board of Revenue to make rules prescribing the manner in which and the procedure by which income, profits and gains shall be arrived at in the case of income derived in part from agriculture and in part from

business. A similar power is confered under Section 295 of the Act of 1961 on the Central Board of Direct Taxes to make rules in respect of income derived in part from agriculture and in part from business. The only difference between Section 59 of the Act of 1922 and Section 295 of the Act of 1961 in this connection, to which our attention was drawn by Mr. Potti, is that sub-section (5) of Section 59 provides that the rules made under the said Section shall be published in the official Gazette and shall thereupon have effect as if enacted in the Act of 1922 whereas Section 296 of the Act of 1961 provides that the rules made under the Act of 1961 have to be laid before each House of Parliament in manner prescribed in Section 296 and both Houses of Parliament are entitled to make such changes therein as they may resolve or they might direct that the rule should not be given effect to. This, however, does not make much, difference. Rule 24 of the Income-tax Rules, 1922 and Rule 8 of the Income-tax Rules, 1962 framed under Section 295 of the Act of 1961 are in pari materia.

28. It may be mentioned here that Rule 7 of the Income-tax Rules, 1962 deals with the computation of income which is partially agricultural and partially from business and Rule 8 is the specific rule dealing with income derived from the sale of tea grown and manufactured by the seller in India. Under sub-rule (1) of Rule 8, it is provided that such income shall be computed as if it were income derived from business and 40 per cent of such income is deemed to be income liable to tax.

29. A perusal of the aforesaid Rule 8(1) makes it clear that under the said rule, income from the sale of tea grown and manufactured by a seller in India has to be computed as if it were income derived from business which would imply that the deductions allowable under the Act of 1961 in respect of income derived from business would be allowable in the case of income derived from the sale of tea grown and manufactured by a seller and further allowance would be granted as set out in Rule 8(2) and 40 per cent of the income so computed would be deemed to be income liable to the levy of income-tax and the balance of the income would be liable to tax as agricultural income subject to such further deductions as the law pertaining to the levy of agricultural income-tax might allow. The question is whether Rule 24 of the Income-tax Rules, 1922 and Rule 8 of the Income-tax Rules, 1962 can be said to form part of the definition of the term "agricultural income" under the Act of 1922 and the Act of 1961 respectively.

30. In Karimtharuvi Tea Estates Ltd. v. State of Kerala, (1963) 48 ITR 83 : (AIR 1963 SC 760) a Bench comprising of five learned Judges of this Court was called upon to consider the question of the power of a State Legislature to make a law in respect of taxes on agricultural income arising from tea plantations and the Bench took the view that the power of the State Legislatures in this connection is limited to legislating with respect to agricultural income determined in accordance with Rule 24 of the Indian Income-tax Rules, 1922, under which income derived from the sale of tea grown and manufactured by the seller is first to be computed under Section 10 of the Act of 1922, as if it were income derived from business. Any expenditure by the assessee, not being an allowance described in clauses (i) to (xiv) of Section 10(2) of the Act of 1922 and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of such business would be deductible. Of the income so computed, 40 per cent, being under Rule 24 of the Indian Income-tax Rules, 1922 treated as income liable to

income-tax, the other 60 per cent alone will be "agricultural income". The State Legislature is free in the exercise of its plenary legislative power to allow further deductions from such computed agricultural income in the case of tea plantations as it considers fit but it cannot add to the amount of agricultural income so computed by providing that certain items of expenditure deducted in the computation of the income from business under the provisions of the Indian Income-tax Act, 1922 be not deducted and be considered to be a part of the taxable agricultural income. The State Legislature cannot enact such a provision which would make agricultural income from tea plantations higher than what it would be if computed in accordance with Rule 24 read with Section 10 of the Indian Income-tax Act. In that case, the provision of the Kerala Agricultural Income-tax Act which had to be considered was Explanation 2 to Section 5 added by an amending Act in 1961 which deals with the computation of agricultural income. The provisions of Section 2 of the Kerala Agricultural Income-tax Act which defined "agricultural income" for the purposes of that Act and the Explanation to clause (2) of subsection (a) of that Section, which Explanation has now been deleted by the impugned Amendment Act, were also considered. It was pointed out (p. 91(of ITR): (at P 705 of AIR) of the Report) that :

" 'Agricultural income' as defined in the Constitution means agricultural income for the purpose of the enactments relating to income-tax'. One such enactment is the Income-tax Act. Rule 24 of the Income-tax Rules 1922 has been made under the power conferred by Section 59 of the Income-tax Act and has effect as if enacted in that Act. When Section 59 of the Income-tax Act provides for the Rules made under that Act to prescribe the proportions of income from business and income from agriculture in the entire income derived in part from agriculture and in part from business, the proportion so prescribed must be taken to be prescribed by the Act. These rules were in existence in 1950 when the Constitution incorporated the definition of "agricultural incomes" from the Income-tax Act by reference. The definition of the term was bound up with the Rules. (Emphasis supplied)

31. It was pointed out by Mr. Potti that there is a reference in the aforesaid judgment to the said Explanation contained in Section 2(a)(2) of the Kerala Agricultural Income-tax Act, which is now deleted, and which substantially incorporated the provisions of Rule 24 of the Income-tax Rules, 1922 about the computation of income derived by an assessee from the sale of tea grown and manufactured by him and the respective proportions of the same which could be regarded as agricultural income and other income respectively. It is, however, not possible to say that the aforesaid decision is essentially based on the said Explanation as contended by Mr. Potti.

32. The question whether computation of income by the Central Income-tax authorities could be disregarded by an Agricultural Income-tax Officer acting under the Kerala Agricultural Income-tax Act came up for consideration before another Bench of five learned Judges of this Court in Anglo-American Direct Tea Trading Co. Ltd. v. Commr. of Agricultural Income-tax, Kerala, (1968) 69 ITR 667 : (AIR 1968 SC 1213). In that case the years in question were 1958-59 to 1961-62, with the result that the provisions of the Act of 1922 as well as the Act of 1961 and of the Income-tax Rules, 1922 as well as the Income-tax Rules, 1962 had to be taken into account. This Court followed its decision in the case of Karimtharuvi Tea Estates Ltd. v. State of Kerala (AIR 1963 SC 760) and held that income from the sale of tea grown and manufactured by an assessee is derived partly from

business and partly from agriculture. This income is computed as if it were income from business under the Central Income-tax Act and the Rules made thereunder. Of the income so computed as aforesaid, 40 per cent is deemed to be income derived from business and assessable to non-agricultural income-tax. The balance of 60 per cent of the income so computed is agricultural income within the meaning of the Central Income-tax Act and the Constitution of India and the power of the State Legislature to make a law in respect of taxes on agricultural income arising from tea plantations is limited to legislating with respect to the agricultural income so determined. It was also pointed out that the Explanation to Section 2(a)(2) of the Kerala Agricultural Income-tax Act, 1950 adopted this rule of computation. It was held in that case that the Agricultural Income-tax Officer acting under the Kerala Act was 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 deductions allowable under Section 5 of the Kerala Act in so far as the same had not been allowed in the assessment under the Central Income-tax Act. The Court also held that if, before Agricultural Income-tax Officer proceeds to make assessment under the Kerala Act, an assessment of income by the Income-tax officer under Rule 24 of the Income-tax Rules, 1922 or Rule 8 of the Income-tax Rules, 1962 had been made then the Agricultural Income-tax Officer acting under the Kerala Act is bound to accept the computation of the tea income already made by the Central Income-tax authorities as aforesaid In the case of State of Tamil Nadu v. Kannan Devan Hills Produce Co. Ltd., (1972) 84 ITR 475: (AIR 1972 SC 375) a Division Bench comprising of two learned Judges of this Court followed the aforesaid decisions.

33. In the case of Tea Estate India P. Ltd. v. Commr. of Income-tax, West Bengal II, (1976) 103 ITR 785 : (AIR 1976 SC 1790) a Bench comprising of two learned Judges of this Court observed (at P. 795) (of ITR) : (at P. 1796 of AIR) as follows:

Income which is realised by sale of tea by a tea company which grows tea on its land and thereafter subjects it to manufacturing process in its factory is an integrated income. Such income consists of two elements or components. One element or component consists of the agricultural income which is yielded in the form of green leaves purely by the land over which tea plants are grown. The second element or component consists of non-agricultural income which is the result of subjecting green leaves which are plucked from the tea plants grown on the land to a particular manufacturing process in the factory of the tea company."

34. The decisions in the cases of Karimtharuvi Tea Estates Ltd. (AIR 1963 SC 760) and Anglo-American Direct Tea Trading Co. Ltd. (AIR 1968 SC 1213) referred to earlier have been cited with approval by a Division Bench of this Court in Commr. of Income-tax, Madras v. R. M. Chidambaram Pillai, (1977) 106 ITR 292: (AIR 1977 SC 489).

35. A reading of Art. 245 of the Constitution with Entry 82 of List I and Entry 46 of List II in the Seventh Schedule makes it clear that the State Legislature has exclusive jurisdiction to legislate in respect of taxes on agricultural income; and in respect of taxes on other income, it is Parliament

alone which can legislate. The term "agricultural income" used in that entry has to be construed in accordance with the definition of the said term in Art. 366(1) of the Constitution of India and that sub-article states that agricultural income means "agricultural income as defined for the purposes of the enactments relating to Indian income-tax". A scrutiny of the aforesaid decisions of this Court in Karimatharuvi Tea Estates Ltd., (AIR 1963 SC 760) and Anglo-American Direct Tea Trading Co. Ltd., (AIR 1968 SC 1213) shows that this Court has consistently taken the view that the definition of the term "agricultural income" for the purposes of the Act of 1922 and the Act of 1961, being Acts pertaining to the levy of income-tax, has to be considered in the light of R. 24 of the Income-tax Rules, 1922 in the case of the Act of 1922 and Rules 7. and 8 of the Income-tax Rules, 1962 as far as the Act of 1961 is concerned. An analysis of the said decisions shows that this Court has taken the view that, in case of income from the sale of tea grown and manufactured by an assessee, Rule 24 of the Income-tax Rules, 1922 and R. 8 of the Income-tax Rules, 1962, although at first glance they appear to be rules of apportionment and computation, must be treated as incorporated in the definition of the term "agricultural income" in the Act of 1922 and the Act of 1961 respectively. It is true that in both the cases,, Karimtharuvi Tea Estates Ltd., and Anglo-American Direct Tea Trading Co. Ltd., (supra) it has been noticed by this Court that the said Explanation to S. 2(a)(2) to the Kerala Agricultural Income-tax Act was in line with the provisions of R. 24 of the Income-tax Rules, 1922 and Rule 8 of the Income-tax Rules, 1962 but that by itself does not make any difference and the reading of the aforesaid decisions makes it perfectly clear that even without that Explanation the position would have been the same. The conclusion which must follow is that although the Explanation has been deleted from clause (2) of sub-sec. (a) of S. 2 of the Kerala Agricultural Income-tax Act and in spite of the amendments carried out by the Amendment Act of 1979 and thereafter the Amendment Act of 1980 in the case of the Bengal Agricultural Income-tax Act, an Agricultural Income-tax Officer acting under the Kerala Agricultural Income-tax Act or the Bengal Agricultural Income-tax Act has no power to levy agricultural income-tax except in respect of 60 per cent of the income derived by an assessee from the sale of tea grown and manufactured by him and computed in the manner laid down under the relevant Central Income-tax Act and the Rules framed thereunder.

36. It was, however, contended by Mr. Potti on behalf of the State of Kerala and Mr. Tapas Ray on behalf of the State of West Bengal that the position as emerging from the aforesaid decisions of this Court has been altered by the decision of this Court in the case of Commr. of Sales Tax, Lucknow v. D.S. Bist, (1979) 44 STC 392: (AIR 1980 SC 169). In that case the assessee owned some tea gardens in the State of U.P. and sold the tea leaves grown by him in his gardens after processing and packing the same. A question arose whether the tea leaves sold by the assessee were agricultural produce grown by himself and the sales were, therefore, not exigible to sales tax under the proviso to S. 2(i) of the U.P. Sales Tax Act, 1948. The contention of the revenue was that the goods in question, namely, tea leaves grown and processed as aforestated had ceased to be an agricultural produce after processing and were, therefore. exigible to sales tax. The processes to which tea-leaves were subjected by the assessee was described by the Revising Authority as follows (at P. 394) (of S TC) : (at Pp. 170-71 of AIR) :

"The tea-leaves were first of all subjected to withering in shadow in rooms on a wooden floor for about 14 hours.

(2) Then they were crushed by hand or foot and were then roasted for about 15 minutes.

(3) Later they were roasted on mats about 15 minutes.

(4) And then they were covered by wet sheets for generating fermentation. During this process the colour of leaves was changed from green to yellowish.

(5) The leaves were then subjected to grading with sieves of various sizes. Fanning machines are also used in completing the grading process.

(6) The produce was then finally roasted with charcoal for obtaining suitable flavour and colours.

(7) It is this final product which was eventually sold by the assessee."

37. It was observed by the Supreme Court that if the tea-leaves sold by the assessee substantially retained the character of being an agricultural produce, the assessee's sales would not be exigible to sales tax. If, on the other hand, the leaves had undergone such vital changes by processing that they lost their character of being an agricultural produce and became a different commodity, then the sales made by the assessee were exigible to sales tax. The Court held that, on the findings recorded by the revising authority, it could not be justifiably held in law that the tea-leaves lost their character of being an agricultural produce and became something different. All the processes applied by the assessee were necessary for the purpose of saving the tea-leaves from perishing, making them fit for transporting and marketing them. It was submitted by learned Counsel that this decision laid down that the processes involved in producing marketable tea were only such as would be carried out by an agriculturist to make his produce marketable and hence the entire income derived from the sale of such tea leaves should be regarded as agricultural income. In our view, it is impossible to accept this contention. In the first place, the question before the Court in that case was not relating to agricultural income-tax at all but relating to sales tax. Moreover, what the Court was called upon to consider, and what it did to consider, was only whether the tea-leaves after undergoing the processes set out earlier continued to be agricultural produce or whether they became a different commodity which could not be regarded as an agricultural produce. It is significant that the aforesaid decisions rendered by Benches comprising five learned Judges of this Court in Karimatharuvi, (AIR 1963 S C 760) and Anglo-American's cases (AIR 1968 SC 1213), as well the other decisions referred to earlier, have not been referred to in that decision at all, and rightly so, because the Division Bench in Bist's case was called upon to consider a question which was essentially a different question. The ratio of the decision in Bist's case has no application to the cases before us. That decision is,

therefore, of no assistance to learned Counsel for the State of Kerala and the State of West Bengal.

38. We find that the judgment in Bist's case, (AIR 1980 SC 169) referred to above has been distinguished by a learned single Judge of the Kerala High Court in High Land Produce Co. Ltd. v. Inspecting Asstt. Commr. of Agricultural Income-tax and Sales Tax (Special), Kottayam, (1984) 148 ITR 746 : (1984 Tax LR 821) in considering the scope of the power of the State Legislature to tax agricultural income. That case arose after the aforesaid amendment of S. 2(a) of the Kerala Agricultural Income-tax Act, 1950 whereby the Explanation at the end of S. 2(a)(2) thereof was deleted. It has been pointed out by the learned Judge that the Explanation to S. 2(a) of the Kerala Agricultural Income-tax Act, 1950 was, in substance, in harmony with the concept of mixed income contemplated by S. 295(2)(b) of the Act of 1961 and R. 8 of Income-tax Rules, 1962. The Explanation specifically referred to that portion of the income from tea as was defined by the Central Act and R. 8 to be agricultural income by exclusion from total income computed under the Central Act. This Explanation has been omitted by the Amendment Act of 1980. The State Legislature is perfectly competent to omit any provision which it has enacted. However, it cannot thereby widen the ambit of the State Act so as to bring to tax the entire income derived from the sale of tea grown and manufactured by an assessee. It has been pointed out by the learned Judge in his judgment that none of the observations in Bist's case could be read to mean that the entirety of the income derived from the sale of tea grown and manufactured by the assessee would be chargeable to agricultural income-tax, for such a construction would not only be unwarranted by the facts and reasoning of that case, but would also be directly in conflict with the Central statute and the principle laid down by larger Benches comprising five learned Judges of the Supreme Court in the aforesaid two decisions.

39. It was contended by Mr. Potti and Mr. Ray, learned counsel for the Respondent States that R. 8 of the Income-tax Rules, 1962 was not a part of an enactment and could not be regarded as an enactment and hence it need not be taken into account in considering the definition of the term "agricultural income" under the Constitution. It was pointed out by them that, unlike sub-sec. (5) of S. 59 of the Act of 1922 which provided that the rules made under the said section would have effect, after publication in the Gazettee, as if enacted in that Act, S. 296 of the Act of 1961 merely provided inter alia that a rule framed under S. 295 had to be laid, as soon as may be, before each House of Parliament while it is in Session for a total period of thirty days and unless it was directed to be deleted or amended by both Houses of Parliament it would be given effect to. It was pointed out by them that R. 8, therefore, could not be said to be an enactment and hence it could not affect the definition of the term "agricultural income" under Art. 366(1) of the Constitution. We are unable to accept this submission. What Art. 366(1) provides is that the term "agricultural income" has the. same meaning as attributed to it for the purposes of enactments relating to Indian income-tax and in our view, it is quite clear that R. 8 of the Income-tax Rules, 1962 as well as R. 24 of the Income-tax Rules, 1922 pertain to and are bound up with the definition of the term "agricultural income" for the purposes of laws or enactments pertaining to Indian income-tax and hence the provisions of those rules have to be taken into account in considering the meaning of the term "agricultural income" under sub-Art.(1) of Art. 366 of the Constitution.

40. It was next contended by Mr. Potti and Mr. Ray that R. 8 went beyond the scope of the rule making power conferred by S. 295 of the Act of 1961 and hence was ultra vires. This submission has to be rejected. Clause (b) of sub-section (2) of S. 295 specifically confers power on the rule making authority to make rules relating to the manner in which and the procedure by which income for the purposes of the Act of 1961 would be arrived at in the case of income derived in part from agriculture and in part from business and R. 8 clearly provides for the manner in which computation of income for the purposes of the Act of 1961 is to be made in the case of income derived from the sale of tea grown and manufactured by a seller in India and hence we totally fail to see how it can be said that the said rule goes beyond the scope of the rule-making power conferred under S.295.

41. In view of what we have discussed above, it appears to us that although the Explanation to S. 2(a)(2) of the Kerala Agricultural Income-tax Act, 1950 has been deleted by the Amendment Act of 1980, the result would still be the same, namely, that the Kerala State Legislature can impose tax only in respect of 60 per cent of the income derived by an assessee who sells tea grown and manufactured by him in India and such income has to be computed in the manner laid down in the Act of 1922 and thereafter in the Act of 1961 for computation of business income. The same is the position in respect of the powers of the legislature of the State of West Bengal in spite of the amendments made by the said legislature by the Amendment Act of 1980 and earlier under the Amending Act of 1979 which was in force only for one year as we have stated before. It is not necessary to strike down the said amendments because they do not directly conflict with the definition of the term "agricultural income" under the Constitution as we have pointed out earlier, but we may make it clear that they do not confer any wider power on the State Legislature to impose taxes on agricultural income than what we have set out earlier.

42. Before parting with the matter, it must be mentioned that the validity of the aforesaid amendments to the Bengal Agricultural Income-tax Act 1944 made in 1980 and the deletion of the Explanation in S. 2(a)(2) of the Kerala Agricultural Income-tax Act were challenged as being ultra vires and invalid in law on several other grounds. We have not thought it necessary to go into these grounds in view of what we have held, as set out above. Dr. Pal on behalf of Tata Tea Co. and Tata Finlay Co. also challenged the amendment carried out in 1980 in the Bengal Agricultural Income-tax Act on the ground of being its retrospective in operation. It also appears to us unnecessary to go into this question in view of what we have already held.

43. In the result, although none of the prayers in the petitions is granted in terms, the petitioners substantially succeed in the petitions. There will be a declaration in terms of the last but one paragraph in favour of the petitioners. Considering the facts and circumstances of the case, however, we feel that the parties should bear and pay their own costs and we direct accordingly.

Order accordingly.

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