SUPREME COURT OF INDIA

Commissioner of Agricultural Income Tax

Vs

M.N. Moni

Appeal (Civil) 2716 of 2007

(Arijit Pasayat, P. K. Balasubramanyan and D. K. Jain, JJ)

18.05.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Kerala High Court answering the reference made to it under the Kerala Agricultural Income Tax Act, 1952 (in short the 'Act') in favour of the respondent (hereinafter referred to as the "assessee").

3. Background facts in a nutshell are as follows:

4. For the assessment years 1982-83 and 1983-84, M/s. E.K. Vijayan and others, Kozhikode was an assessee under the Act. Shri M.N. Moni was the executor of the estates of the assessee. The assessee owned an estate, namely, "Woodland Estate". Assessee derived agricultural income from coffee,

pepper, arecanut, coconut, cardamom and coco. For the assessment years i.e. 1982-83 and 1983-84 the assessee filed returns disclosing agricultural income of Rs.1, 22, 520/- and Rs.2, 88, 996/- respectively. The Assessing Officer was of the view that the returns filed did not reflect the correct and complete picture as the assessee had not disclosed the income from coffee during 1982-83 season and income disclosed of pepper was low and, in fact no income was disclosed from orange, arecanuts, coconuts, cardamom, and coco and many inadmissible expenses were claimed as deductions. Notices were issued on 2.3.1987 and 17.10.1987 proposing to make best judgment assessments. Assessee filed its reply to the notices. After consideration of the objections filed, the Inspecting Assistant Commissioner of Agricultural Income Tax completed the assessments determining the income at Rs.7, 97, 380/- and Rs.5, 06, 641/- respectively for the two assessment years. It was noted that the E.B. 2 register in respect of 60.79 acres of new registered area was not produced. The production details of the said area were also not disclosed. Accordingly, the income of coffee from 60.79 acres was estimated and included in the taxable income. Appeals were preferred by the assessee before the Deputy Commissioner (Appeals), who confirmed the findings of the Assessing Officer on the issue relating to 60.79 acres of new registered area and the income therefrom. However, the Appellate Authority directed that the cultivation expenses were to be allowed @ Rs.2, 000/- per acre. Assessee preferred the Second Appeals before the Kerala Agricultural Income Tax Appellate Tribunal, Additional Bench, Kozhikode (in short 'Tribunal'). The Tribunal found that the accounts produced by the assessee were only in respect of the 218 acres of land and the activities relating to 60.79 acres of land were not disclosed. Accordingly, the Tribunal confirmed the estimate of income from the aforesaid 60.79 acres of land.

5. An application for reference in terms of Section 60 of the Act was filed. It was rejected by the Tribunal. Original petitions were filed before the High Court which by order dated April 1, 1996, directed the Tribunal to refer one of the questions formulated by the assessee and to refer the question no.1 along with the statement of facts:

6. Accordingly, the reference was made which was disposed of by the impugned order.

7. The question that was referred reads as follows:

"Whether on the facts and circumstances of the case, is the finding of the Tribunal that income from 60.79 acres of unregistered coffee area is not included in the accounts of the assessee supported by any material or evidence?"

8. By the impugned order, the High Court held that the orders of the Tribunal were not correct and the question was to be decided in favour of the assessee.

9. In support of the appeal, learned counsel for the appellant submitted that the Original Authority and the Appellate Authority considered the factual position in detail and recorded findings of fact that in relation to 60.79 acres of land incomes were not disclosed. The High Court without discussing the factual position, in a summary manner, set aside the findings recorded by the authorities. The order of the High Court, it was therefore submitted, cannot be maintained.

10. Per contra, learned counsel for the assessee submitted that the High Court has taken note of relevant factors and, therefore, no interference is called for.

11. We find that after making a brief reference to the controversy, the High Court disposed of the reference with the following observations:

"The contention of the assessee was that so far as they are concerned, they have returned the entire agricultural income from the property. Further, it was submitted that with regard to coffee, they cannot sell coffee to outsider, but it can be sold through M/s. Pierce Leslie. In the above view of the fact, the contention of the assessee is that conclusion by the authorities is not correct. The Tribunal, after considering the case, came into the conclusion that the assessee had not shown the return from 60.79 acres. According to us, this view is not correct. In so far as the coffee can be sold only through M/S. Pierce Leslie, there is no basis for the Department to state that the entire income has not been returned."

12. No reason which weighed with the High Court to upset the orders of the Assessing Authority and the Appellate Authorities is discernible. Findings of facts were recorded by the said authorities. In a reference there is no scope for interference with the factual findings, unless the findings are per se without reason or basis, perverse and/or contrary to materials on record. Merely because different view on facts may be available to be drawn, that cannot be a ground to interfere with the findings of fact recorded by the authorities.

13. In cases of reference, only a question of law can be answered. Where the determination of an issue depends upon the appreciation of evidence or materials resulting in ascertainment of basic facts without application of law, the issue raises a mere question of fact. An inference from certain facts is also a question of fact. A conclusion based on appreciation of facts does not give rise to any question of law. If a finding of fact is arrived at by the Tribunal after improperly rejecting evidence, a question of law arises. Where the Tribunal acts on materials partly relevant and partly irrelevant, a question of law arises because it is impossible to say to what extent the mind of the Tribunal was affected by the irrelevant material used by it in arriving at the finding.

14. A question of fact becomes a question of law if the finding is either without any evidence or material.

15. In the instant case, the High Court has not even indicated as to why it considered the conclusions of the Assessing Authority and the Appellate Authority to be unsustainable. It is to be noted that even after the reference is made by the Tribunal directly or on the basis of a direction given by the High Court, it is open to the High Court not to answer the reference if no question of law is involved.

16. Therefore, without expressing any opinion on the merits, we set aside the order of the High

Court and remit the matter to it for fresh consideration. The appeal is accordingly disposed of. No costs.