SUPREME COURT OF INDIA

Union of India

Vs.

Belgachi Tea Co. Ltd.

C.A.No.8284-8285 of 2002

(Ashok Bhan and Dalveer Bhandari JJ.)

09.05.2008

JUDGMENT

Dalveer Bhandari, J.

1. These appeals are directed against the judgment of the Division Bench of the High Court of Judicature at Calcutta delivered on 22nd September, 2000 in FMA No.232 of 1999.

2. Brief facts which are necessary to dispose of these appeals are recapitulated as under:

3. The assessee Belgachi Tea Company filed a writ petition in the High Court of Judicature at Calcutta under Article 226 of the Constitution. The main prayer of the writ petition is reproduced as under:

> "A writ in the nature of mandamus be issued commanding the respondents to act according to law and to cancel and/or rescind and/or withdraw notices of demand dated 29.03.1984, 04.04.1984, 29.03.1985 and any proceeding taken or purported to have been taken under the Bengal Act, as amended by the Bengal Agricultural Income Tax (Amendment) Act, 1980 for the purpose of levy, imposition and collection of agricultural income tax in respect of income derived from the said tea grown and manufactured by your petitioner and further forbearing the respondents from giving any effect or further effect of proceeding in any way to enforce the impugned notices of demand dated 26.3.1984, 04.04.1984 and 29.03.1985."

4. The assessee also prayed that sections 3 and 5 of the *Bengal Agricultural Income Tax (Amendment) Act, 1980* be declared as ultra vires of the Constitution and beyond the competence of the State Legislature in enacting the same.

5. The writ petition was disposed of by the learned Single Judge of the Calcutta High Court in terms of the judgment of this court in *Tata Tea Ltd. & Another v. State of West Bengal & Others*[1]. In this case, the court directed that after assessment, the Income Tax Officer (for short "ITO") can levy the tax on 40% of the income in accordance with the provisions of the

Income Tax Act, 1961 (hereinafter referred to as "the 1961 Act") and balance amount may be assessed by the Agricultural Income Tax Officer to tax under the *Bengal Agricultural Income Tax Act, 1944* (hereinafter referred to as "the 1944 Act"). The court further directed that if any assessment order has already been passed contrary to the aforesaid directions, such order must stand quashed and a fresh assessment order should be passed in accordance with law.

6. Being aggrieved by the said judgment of the learned Single Judge, the assessee company preferred FMA No.232 of 1999 before the Division Bench of the High Court of Calcutta.

7. The assessee is a public limited company carrying on the composite business of growing and manufacturing tea in the district of Darjeeling. The assessee company has tea gardens known as Belgachi Tea Estate, which consists of the gardens and a factory for manufacture of tea. The assessee company sells the tea grown and manufactured in the said tea gardens. The factory in the said tea gardens is licensed under the Factories Act. The assessee company is also selling tea leaves produced in its tea gardens which is agricultural produce. The assessee is also involved in manufacturing of tea. The income from such business has been assessed all along under the provisions of the 1961 Act. The claim of the assessee company is that the entire income should be assessed under the provisions of the 1961 Act and after the income is assessed, the tax should be charged on 40% of such income under the 1961 Act and on the balance 60%, the State can tax under the 1944 Act. The assessee submitted that in view of the scheme of the 1961 Act read with rule 8 of the *Income Tax Rules, 1962*, the income derived from the sale of the tea grown and manufactured by a seller in India shall be computed under the provisions of the Act by the Income Tax Officer on the basis of aforementioned formula.

8. Learned counsel for the assessee submitted that the sale proceeds of green tea leaves are treated incidental to business and its income should be computed under the provisions of the 1961 Act.

9. Learned counsel appearing for the State submitted that the income from sale of green tea leaves is taxable as income from agriculture under the 1944 Act.

10. The Division Bench in the impugned judgment placed reliance and followed the judgment of this court in Tata Tea(supra), in which the court considered how the income from tea grown and manufactured' activities shall be taxed by the Centre and the State. After considering the provisions of both the 1944 Act and the 1961 Act, the court observed as under:-

> "41. ..... 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."

11. This court considered the amendments made by the State Governments i.e. West Bengal and Kerala regarding tax on the entire income. There is no dispute on the fact that from the income assessed, 60% is taxable by the State under the 1944 Act and 40% is taxable by the Centre under the 1961 Act.

12. The object behind taxing the 60% and 40% share of the income assessed appears that there are common expenses on establishment and staff for two different activities that is tea grown and tea manufactured. There can be independent income from sale of green tea leaves and by sale of tea, that is, after processing of green tea leaves when green tea leaves become tea for use. Income from agriculture is taxable by the State and sale of tea after manufacturing is taxable by the Union of India as business income. To segregate income and expenses from two combined activities of assessee is not possible, but at the same time there cannot be two assessments of income by two different authorities. Therefore, there can be only one assessment of income from the tea business. In order to properly comprehend the legislative intention, a combined reading of relevant provisions of both the Acts i.e. the 1961 Act and the 1944 Act and the Rules framed thereunder is necessary. The relevant provision is rule 8 of the Income Tax Rules, 1962 which reads as under:

"8. (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 amount of any subsidy which under the provisions of clause (30) of section 10 is not includible."

The similar provision in the 1944 Act is sub-section (1A) of section 8, which reads as under:-

"(1A) Notwithstanding anything contained in this Act, in the case of tea grown in West Bengal and sold by the grower himself or his agent after manufacture, the agricultural income derived therefrom shall, as long as the purpose of assessment of income tax under the enactment relating to Indian Income Tax, the income derived therefrom is computed under those enactment 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 those enactments, and agricultural income tax at the rates specified in the Schedule shall be payable on the whole of such agricultural income as so computed."

13. The aforesaid sub-section (1A) which has been inserted with retrospective effect also provides that income from `tea grown and manufactured' shall be assessed under the provisions of Income Tax Act and the income assessed also includes agricultural income which is taxable by the State.

14. Sub-section (3) of section 8 of the 1944 Act further provides that for the purpose of assessment of agricultural income tax a certified copy of an order of the assessment made under the Income Tax Act shall be conclusive evidence of the contents of such order. The relevant sub-section (3) of section 8 of the 1944 Act reads as under:-

"(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."

15. For the purpose of tax on agricultural income, the Agricultural Income Tax Officer will go by the assessment order made under the provisions of the 1961 Act and the contents of the assessment for the year made by the Assessing Officer under the 1961 Act shall be conclusive evidence of the contents of such order and he has to go by the assessment and tax only 60% income made under the assessment for the purpose of the 1944 Act. If there is any apparent mistake in the order of the ITO, he can bring it to the notice of ITO and that can be rectified by the ITO but no separate assessment of the income from `tea grown and manufactured' business can be made by the Agricultural Income Tax Officer under the 1944 Act. He cannot once again assess for that business income under the 1944 Act.

16. The combined reading of rule 8 of the *Income Tax Rules, 1962* and section 8 of the 1944 Act and its amendment by insertion of sub-section (1A) in section 8 of the 1944 Act left no doubt that the income from `tea grown and manufactured' business, the income shall be computed in accordance with provisions of the 1961 Act by the Assessing Officer under the 1961 Act and 40% of the income is taxable under the 1961 Act and 60% income is taxable under the 1944 Act by the State treating it as income from agriculture.

17. According to the assessee, agricultural income derived from the sale of green tea leaves is incidental income from the business of the assessee and cannot be taxed separately by the 1944 Act.

18. There is no dispute that agricultural income of the assessee is taxable under the 1944 Act. The agricultural income has been defined in clause (1) of section 2 of the 1944Act. The said definition reads as under:

> "2(1) "agricultural income" means
>
> (a) Any rent or revenue derived from land which is used for agricultural purpose, and is either assessed to land revenue in a State 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 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 item (ii)
>
> (c) Any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind of any land with respect to which, or the produce of which, any operation mentioned in items (ii) and (iii) of sub-clause (b) is carried on;
>
> Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling house, or as a store house or other out building."
>
> The definition of the 1944 Act makes it clear that the income from sale of green tea leaves is an agricultural income.

19. Now the question which arises for adjudication is whether the agricultural income be taxed under the 1961 Act? It is true that both rule 8 of the *Income Tax Rules, 1962* and section 8 of the 1944 Act provide how the mixed income from the growing tea leaves and tea manufacturing can be taxed. Mixed income means the income derived by an assessee from the combined activities i.e. growing of tea leaves and manufacturing of tea. Therefore, for the purpose of computation of income under the 1961 Act, it should be the mixed income from `tea grown and manufactured' by the assessee.

20. If the income is by sale of green tea leaves by the assessee it cannot be called income assessable under the 1961 Act for the purpose of 40:60 share between the Centre and the

State. In both the provisions i.e. rule 8 of the *Income Tax Rules, 1962* and section 8 of the 1944 Act, the word used is income derived from the sale of `tea grown and manufactured'.

21. The income from sale of green tea leaves is purely income from the agricultural product. There is no question of taxing it as incidental income of the assessee when there is a specific provision and authority to tax that income i.e. the State, under the 1944 Act. In this view of the matter, the agricultural income cannot be taxed under 1961 Act.

22. It is also pertinent to mention that the Income Tax Officer has assessed the income of tea manufactured by the assessee from 1977-78 to 1980-81 to the tune of Rs.1,44,250/-, Rs.4,28,040/-, Rs.54,450/- and Rs.92,351/- respectively and income of the assessee from the sale of green tea leaves was more than Rs.10 lakhs in each accounting year (1977-78 and 1978-79). In this view of the matter, the income of the assessee from the sale of tea leaves can never be incidental to business.

23. On careful analysis of this argument of the assessee, we find the same to be devoid of any merit. In a given case the assessee can process only 10% of green tea leaves and 90% of green tea leaves can be sold directly in the market. Can that income from sale of green tea leaves be treated incidental to the business? This can never be the intention of legislature.

24. In case the assessee directly sells the green tea leaves resulting into an income from agricultural products, it cannot be taken as incidental income to the business and whatever the income is derived from the sale of the green tea leaves can be assessed by the Agricultural Income Tax Officer under the 1944 Act.

25. The Division Bench of the High Court while following the ratio of Tata Tea (supra) directed the Assessing Officer to compute the tax on the income of the respondent assessee on the basis of the aforementioned formula.

26. The High Court further directed that in case the agricultural income had wrongly been included by the Income Tax Officer in computing the income under the provisions of 1961 Act that could be excluded and assessment could be rectified. In the impugned judgment, it is also incorporated that by following these principles the Income Tax Officer would avoid the double taxation of the assessee.

27. It is also directed that while taxing the income from the sale of green tea leaves, the Agricultural Income Tax Officer should see, if expenses on the tea grown are already allowed to be deducted by the Income Tax Officer, there shall be no double deduction of the expenses, otherwise it would result in double deduction. The Division Bench, in the impugned judgment, after hearing the parties, while relying on Tata Tea (supra), summed up the case in the following manner:

> "(I) The income from `tea grown and manufactured' shall be assessed by the Assessing Officer under the 1961 Act.

(II) The income assessed 40% shall be taxed under the 1961 Act and balance 60% shall be taxed under the 1944 Act by Agricultural Income Tax Officer on the basis of income assessed by the Assessing Officer under the 1961 Act.

(III) The income derived from sale of green tea leaves is agricultural income and assessable under the 1944 Act."

28. In our view, the conclusion arrived at by the Division Bench of the High Court is in consonance with the judgment of this Court in Tata Tea (supra). This Court in Tata Tea (supra) held as follows:

"35. A reading of Article 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".

29. We have heard the learned counsel for the parties at length. We have also perused the provisions of the 1944 Act and the 1961 Act. We uphold the view which has been taken by the Division Bench of the High Court in the impugned judgment.

30. Before parting with this case, we deem it appropriate to direct the Assessing Officer to frame an assessment order in the case of the respondent assessee on the principle of law laid down by this Court in the case of Tata Tea (supra) and followed by the Division Bench of the High Court in the impugned judgment, if not already made.

31. We further direct the Assessing Officer that in case the assessment order has already been passed contrary to the ratio of Tata Tea (supra), such assessment order must stand quashed and fresh assessment order be passed in accordance with law, as expeditiously as possible.

32. These appeals are disposed of in terms of the aforementioned directions. In the facts and circumstances of the case, the parties are directed to bear their own costs.

[1] *1988 (Supp) SCC 316*