CALCUTTA HIGH COURT

Missioner of Agricultural Income Tax

Vs

Sultan Ali Gharami

(Chakravartti, J.)

20.06.1951

JUDGEMENT

Chakravartti, J.

(1.) THIS is a reference under s. 63(1) of the Bengal Agrl. IT Act and concerns a somewhat tricky point of procedure, arising out of the following facts.

(2.) ON the 8th Feb., 1945, a general notice under s. 24(1) of the Bengal Agrl. IT Act was published in the press, calling for returns of agricultural income of the "previous year", relative to the asst. yr. 1944-45. The respondent assessee did not file any return in compliance with that notice nor was any individual notice under s. 24(2) served on him at any time during the assessment year. About three years later, on the 16th March, 1948, he received a notice under s. 24(2), requiring him to file a return for the asst. yr. 1944-45. He complied with that notice and on the 15th June, 1948, filed a return in which he showed an income of Rs. 1,242-6-3 for 1350 B. S., which was the "previous" or accounting year in his case. The ITO was not satisfied that the return was correct and so on the 9th July, 1948, he served two further notices on the assessee one under s. 24(4) of the Act requiring him to produce his accounts and another under s. 25(2) requiring him to produce any evidence on which he himself might wish to rely. The hearing was fixed for the 20th July, 1948. The assessee did not comply with either of the two notices nor did he appear on the date of hearing. In fact he paid no further attention to the assessment proceedings at all. In those circumstances, the ITO made a best judgment assessment under s. 25(5) of the Act on the 20th Aug., 1948. He determined the income at Rs. 8,687, assessed on it a tax of Rs. 394-14-0 and added a penalty of Rs. 250. It may be stated here that the best judgment assessment was made on the ground of failure to comply with the notices under ss. 24(4) and 25(2) and the penalty was imposed under s. 32(1)(b) which contemplates the same defaults. The assessee appealed against the assessment to the AAC and the ground urged by him was that no notice under s. 24(2) having been served during the assessment year the assessment made in 1948 without the issue of a notice under s. 38 was wholly invalid. The contention was accepted by the AAC who set aside the assessment together with the order imposing a penalty and

directed the ITO to make a fresh assessment in accordance with law. On appeal by the Department the Tribunal upheld the order of the AAC.

(3.) IN order that the question that has been referred may be understood it is necessary to state at this stage how the case for the Department was put before the Tribunal. It was contended that the return filed by the assessee could rightly be taken as a return filed in compliance with the notice under s. 24(1), for the obligation to file a return under that notice was subsisting and if the return could be so regarded no question of issuing a notice under s. 38 arose. The notice actually issued under s. 24(2) could be ignored for the issue of a notice under that section was optional and if the primary notice under s. 24(1) was still in force the invalidity of an optional notice was immaterial. It was contended further that in any event the assessee having filed a return the ITO was entitled to proceed upon it and it was not necessary for him to issue a notice under s. 38. It was also contended that the validity of an assessment was not dependent on the validity of the notices and the invalidity of the notice under s. 24(2) did not affect the validity of the assessment in the present case. These contentions did not find favour with the Tribunal. In due course the Commr. of Agrl. IT applied to the Tribunal for a reference to this Court of a question of law formulated by him. The assessee on his part suggested a question in a slightly different form. The Tribunal however preferred to frame a question for itself and drew up and referred the following question :-- "Whether on the facts and circumstances of the case the duty imposed on the assessee under s. 24 (1) of the Bengal Agrl. IT Act, 1944, for furnishing the return of his agricultural income of the 'previous year' (1943-44), relative to the asst. yr. 1944-45, could endure beyond that assessment year so as to be effective for the assessment initiated later (1947-48) without the aid and operation of s. 38(1) of the Act ?" It appeared to us that the question framed by the Tribunal besides being somewhat ponderous was inadequate because an answer to it one way or the other would leave the validity of the assessment still undecided. The questions framed by the parties were direct in form and as the Tribunal itself has observed put the validity of the assessment in issue by reference to the grounds of defence and attack on which they respectively relied. The Tribunal did not