KERALA HIGH COURT

Commissioner of Agricultural Income-Tax

Vs.

Perunad Plantations Ltd

Income-tax Referred Cases Nos. 42, 43 and 44 of 1963

(M.S. Menon, C.J. and M. Madhavan Nair, J.)

17.07.1964

JUDGMENT

M.S. Menon, C.J.

1. These references are by the Kerala Agricultural Income tax Appellate Tribunal, Trivandrum, under S. 60 (1) of the Agricultural Income-tax Act, 1950. The first two questions referred in I. T. R. Nos. 42 and 43 are covered by our decision in to be answered against the Department and in favour of the *Commissioner of Agrl. Incometax v. Johnsons Estates and Agencies (P) Ltd*[1]*.,* and it is common ground that in the light of that decision, those questions have assessee. We do so.

2. The third and the last question in I. T. R. Nos. 42 and 43 and the only question in ITR No. 44 is worded as follows:

> "Whether the Agricultural Incometax Officer is to follow the computation of Income from tea made by the Central Incometax Officer or whether he can find out the income from tea plantations applying the provisions of the Indian Incometax Act and make the assessment exercising his powers under the Agricultural Incometax Act".

The power of the State to legislate in respect of agricultural income is derived from entry 46-Taxes on agricultural income-of the State List (List II) in the Seventh Schedule to the Constitution. Article 366 (1) of the Constitution defines the expression "agricultural income". According to that definition "agricultural income" means "agricultural income as defined for the purposes of the enactments relating to Indian incometax". The Indian Incometax Act, 1922, defines that expression in sub-section (1) of S, 2. According to that definition "agricultural income" means:

> "(a) any rent or revenue derived from land which is used for agricultural purposes, and is 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-

[1]1964-52 I.T.R. 629

(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);

(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, or any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of 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."

3. This definition can he altered, but only as provided in article 274 (1) of the Constitution. Under that clause no bill or amendment which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian Income-tax shall he introduced or moved in either house of Parliament except on the recommendation of the President.

4. The power of the Union to impose taxes on income is confined to income other than agricultural income. This is clear from entry 82 of the Union List (List I) in the Seventh Schedule to the Constitution.

5. The assessees grow tea, subject it to it manufacturing process and sell the manufactured product. In other words their income is derived partly from agriculture and partly from manufacture. Such income has necessarily to be apportioned, the element referable to the manufacturing process being taxable by the Union under the Indian Income-tax Act, 1922, and the element referable to the agricultural activities being taxable by the State under the Agricultural Income-tax Act, 1950.

6. Rule 24 of the Indian Income-tax Rules, 1922 provides:

"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 percent 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."

The rule-making power is derived from S. 59 of the Indian Income-tax Act, 1922. There are five

sub-sections to that section. Sub section (1) says:
The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of the taxable territories or for such part thereof as may be specified"; and sub-section (2):

> "Without prejudice to the generality of the foregoing power, such rules may-
> (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."

Sub-section (5) is to the effect that the rules made under the section shall be published in the official Gazette, and shall thereupon have effect as if enacted in the Act.

7. In *Karimtharuvi Tea Estates Ltd. v. State of Kerala*[2], the Supreme Court said:

> "The result of rule 24 is that the income derived from the sale of tea grown and manufactured by the seller is to be computed in the first instance as if it was income derived from business. Consequently, the income would be computed in accordance with the provisions of S. 10 of the Income-tax Act. Clause (xv) of sub-s. (2) of S. 10 provides that in computing the income any expenditure by an assessee not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, would be deducted. Of the income so computed, 40 per cent is, under rule 24, to be treated as income liable to income-tax and it would follow that the other 60 per cent only will he deemed to be `agricultural income' within the meaning of that expression in the income-tax Act. It follows, therefore, that the power of the State Legislature to make a law in respect of taxes on agricultural income arising from tea plantations will be limited to legislating with respect to the agricultural income so determined. The State Legislature is free in the exercise of its plenary legislative power to allow further deductions from such computed agricultural income as it considers fit, but it cannot add to the amount of the agricultural income so computed by providing that certain items of expenditure deducted in the computation of the income from a business under the provisions of the Income-tax Act be not deducted and be considered to be a part of the taxable agricultural income."

We do not understand this decision to mean anything more than "that agricultural income from tea plantations is to he computed in the same manner as it is computed under the provisions of the Income-tax Act", and that "in computing such agricultural income for the purpose of taxation under the Agricultural Income-tax Act, the explanation to S. 2 (a) (2) of that Act must be kept in mind and the income must be taken to be as defined for the purposes of the enactments relating to Indian income-tax". The first quotation is from paragraph 9 and the second from paragraph 17 of the judgment of the Supreme Court.

[2] AIR. 1963 SC. 760

8. S. 2 (a) of the Agricultural Income-tax Act, 1950, defines "agricultural income". The explanation to S. 2 (a) (2) mentioned by the Supreme Court reads 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".

9. It is common ground that sixty per cent of the income of the assessees is liable to be taxed as agricultural income under the Agricultural Income-tax Act, 1950. The only question for determination is whether the Agricultural Income-tax Officer functioning under that Act is bound to calculate that sixty per cent on the basis of the income as evaluated by the Income-tax Officer functioning under the Indian Income-tax Act, 1922, for calculating the forty percent taxable under that Act.

10. We entertain no doubt that the Agricultural Income-tax Officer is not so bound. His obligation is only to bear in mind the fact that nothing should be considered as agricultural income which is not agricultural income as defined for the purposes of the enactments relating to Indian Income-tax.

11. Any other conclusion will be an inroad into the powers of the State to legislate in pursuance of entry 46 of the State List (List II) in the Seventh Schedule to the Constitution. It will also create complications, for example, in cases of best judgment assessments, in cases where the assessment under the Indian Income-tax Act, 1922, has not been made or finalized and in cases where the accounting year of an assessee for the purposes of the Indian Income-tax Act, 1922, and the Agricultural Income-tax Act, 1950, is not identical but different.

12. Our attention was drawn to the unreported decision of a Division Bench of this Court in T. R. C. No. 91 of 1959. That was a case, rot under the Agricultural Income-tax Act, 1950, but under the Madras Plantations Agricultural Income-tax Act, 1955; and in view of that and of rule 7 of the Madras Plantations Agricultural Income-tax Rules, 1955, we did not consider it necessary to refer these cases to a fuller bench for decision. Rule 7 deals with the computation of income from tea. It says:

> "In respect of agricultural income from tea grown and manufactured by the seller in the State of Madras, the portion of the income worked out under the Indian Income-tax Act and left unassessed as being agricultural shall be assessed under the Act after allowing such deductions under the Act and the rules made thereunder:
> Provided that the computation made by the Indian Income-tax Officer shall ordinarily be accepted by the Agricultural Income-tax Officer who may for his satisfaction under Ss. 16 and 17 of the Act, obtain further details from the assessee or from the Indian Income-tax Officer but shall not without the previous sanction of the Assistant Commissioner of Agricultural Income-tax require under S. 39, the production of account books already examined by the Indian Income-tax Officer for determining the agricultural income from tea grown and manufactured in the State of Madras or refuse to accept the computation of the Indian Income-tax Officer:

Provided further that if the income for the purpose of the Indian Income-tax Act his not been determined before the filing of returns under S. 16, the assessee shall submit along with the returns a statement of profit and loss 'in respect of his entire income derived partly from agriculture and partly from business and thereupon he shall be assessed in accordance with the provisions of the Act and the rules made thereunder".

13. In the light of what is stated above we must say that the Agricultural Income-tax Officer is not bound "to follow the computation of income from tea made by the Central Income-tax Officer" and that "he can find out the income from the plantations applying the provisions of the Indian Income-tax Act and make the assessment exercising his powers under the Agricultural Income-tax Act", and answer the last question in ITR. Nos. 42 and 43 and the only question in ITR. No. 44 in favour of the Department and against the assessees. We do so; but in the circumstances of the case without any order as to costs.

14. A copy of this judgment under the seal of the High Court and the signature of the Registrar will he forwarded to the Appellate Tribunal as required by sub-section (6) of S. 60 of the Agricultural Income-tax Act, 1950.

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