(1993) 11 KL CK 0021

In the High Court Of Kerala

Case No : T.R.C. No. 258 of 1992

Abraham Mathew APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 10-11-1993

Acts Referred:

Kerala Agricultural Income Tax (Amendment) Act, 1991 — Section 78
Kerala Agricultural Income Tax Act, 1950 — Section 34, 60

Citation : (1993) 1 ILR (Ker) 268

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : K. Sankaran and N. Muraleedharan Nair, for the Appellant; V.C. James, Senior Government Pleader, for the Respondent

Judgement

K.S. Paripoornan, J.—This is a revision filed u/s 78 of the Kerala Agricultural Income Tax Act, 1991. The petitioner is an assessee to agricultural Income Tax. He is an estate owner. He has income from rubber, coconut and arecanut in the said estate. The respondent is the Revenue. We are concerned with the assessment year 1988-89. The assessee submitted a return on August 1, 1988, showing the net income at Rs. 21,110.46. The Agricultural Income Tax Officer did not accept the return. He served a pre-assessment notice dated August 3, 1988, on the assessee and proposed to reject the return and the accounts. He also stated that the total assessable income will be estimated at Rs. 70,000. There was an inspection report dated July 30, 1988, before the Agricultural Income Tax Officer showing the relevant particulars. Though the proposal to estimate the taxable income at Rs. 70,000 was intimated to the assessee and an opportunity was afforded to him to have his say, the assessee did not file any objection. By order dated July 17, 1989, the Agricultural Income Tax Officer fixed the net income at Rs. 70,000 and imposed a sum of Rs. 25,500 as agricultural Income Tax besides surcharge of Rs. 2,517. The assessee took up the matter in appeal before the Appellate Assistant Commissioner, Agricultural Income Tax and Sales tax, Cannanore. By order dated September 25, 1989, in A. I. T. A. No. 246 of

1989, the Appellate Assistant Commissioner set aside the assessment and ordered a remit. One of the questions mooted before the Appellate Assistant Commissioner was regarding the income estimated from slaughter tapping of the rubber trees. The assessee pleaded before the Appellate Assistant Commissioner that the estate was leased out to one Tharayil Joy and there was no slaughter tapping. The Appellate Assistant Commissioner observed that the assessing authority has not taken a proper decision in the matter, that he ought to have summoned and examined the lessee and that the fact that in the previous year the lease claimed was accepted is a factor to be taken into account. After the remit, the Agricultural Income Tax Officer served a notice dated March 21, 1990, on the assessee to produce relevant evidence. The assessee was asked to produce the evidence on March 28, 1990. The assessee did not produce any evidence. He pleaded for time. Thereafter, a pre-assessment notice was served on the assessee proposing to reject the returns and the accounts and also the lease deed pleaded by the assessee. The pre-assessment notice dated April 17, 1990, available at page 75 of the records, shows that the assessee was informed that the agreement pleaded between the assessee and Tharayil Joy cannot be accepted as it is against truth and that it is proposed to reject the lease deed and to fix the net assessable income at Rs. 70,000. The pre-assessment notice dated April 17, 1990, was served on the assessee. It gave an opportunity to the assessee of being heard on April 25, 1990. On that day, the assessee requested for time. Time was granted. The matter was posted to May 5, 1990. The assessee again applied for time, in view of his daughter''s marriage. The Agricultural Income Tax Officer granted two weeks'' time and further recorded that no further time will be granted. It is so seen from the records at page 78. The Agricultural Income Tax Officer has made a note to that effect on May 5, 1990. Though the assessee was given two opportunities to file his objections to the pre-assessment notice, he did not file any objections. It does not appear that he prayed for any further opportunity. So, the proposals contained in the pre-assessment notice were given effect to and a fresh order of assessment was passed on December 24, 1990, fixing the net income as fixed in the original order at Rs. 70,000 and a surcharge of Rs. 2,550 was fixed. After giving due credit to the amounts paid, a balance of Rs. 27,684 was demanded. The assessee carried the matter by way of revision before the Deputy Commissioner (Appeals), Agricultural Income Tax and Sales tax, Kozhikode, who, by order dated July 18, 1992, dismissed the revision. The Deputy Commissioner found that the assessee was given ample time (about 8 months'' time) to produce further evidence in support of the lease deed and to file objections before completing the assessments as proposed in the notice dated April 17, 1990. Even then, the assessee did not avail of the opportunities afforded to him. After noticing the various reasons stated by the Agricultural Income Tax Officer to reject the lease deed and the failure of the assessee to lead evidence or to avail of the opportunity given to him, the Deputy Commissioner affirmed the order of assessment. The certificate of the Village Officer dated September 14, 1989, produced for the first time before the Deputy Commissioner was held to be unacceptable. It was not produced before the assessing authority and no reliance was placed thereon. Moreover, the certificate was issued long after the closure of the accounting period. The Deputy Commissioner came to the conclusion that the lease deed was executed to circumvent the provisions of law. It is against the aforesaid order of the Deputy Commissioner dated July 18, 1992, that this revision is filed u/s 78 of the Agricultural Income Tax Act, 1991.

2. We heard counsel for the petitioner-assessee and also counsel for the respondent-Revenue, Senior Government Pleader, Mr. V.C. James.

3. Prima facie, this revision filed u/s 78 of the Kerala Agricultural Income Tax Act, 1991, against the order of the Deputy Commissioner dated July 18, 1992, is not maintainable. The revisional order was passed by the Deputy Commissioner on an application filed by the assessee u/s 34 of the Act. Under the Agricultural Income Tax Act, 1950, such an order declining to interfere with the order passed by the assessing authority is not revisable by the Commissioner of Agricultural Income Tax nor can it be the subject-matter of reference to this court u/s 60 of the Act. u/s 78 of the Agricultural Income Tax Act, 1991, a revision is maintainable against an order passed by the Commissioner of Agricultural Income Tax u/s 76, 77 or 79 (see Section 78(1)(a) and (1)(b) of the Act). The order passed by the Commissioner u/s 76 is an order passed in exercise of the revisional power suo motu. The order that can be passed by the Commissioner in revision on an application filed by the assessee is one provided by Section 77. That is a revision filed from an order passed by the Deputy Commissioner. The order that can be passed by the Commissioner u/s 79 is an order levying penalty for failure to furnish return, comply with notice, concealment of agricultural income, etc. In this case, even assuming that the Deputy Commissioner of Agricultural Income Tax and Sales Tax (Appeals) was exercising a delegated power, the said order is not one similar to the one that can be passed in exercise of the powers u/s 76, 77 or 79. If that be so, this revision u/s 78(1)(b) of the Agricultural Income Tax Act, 1991, against the order passed by the Deputy Commissioner of Agricultural Income Tax and Sales Tax (Appeals) dated July 18, 1992, is not one revisable u/s 78 of the Act by this court. We hold so. On this short ground, this revision is not maintainable.

4. Counsel for the assessee contended that the order passed by the Deputy Commissioner (Appeals) dated July 18, 1992, discloses patent illegalities and irregularities and is manifestly unjust. We are of the view that even assuming that revision will not lie u/s 78 of the Agricultural income tax Act, 1991, if the order passed by the Deputy Commissioner (Appeals) dated July 18, 1992, is infirm or patently unjust, the jurisdiction of this court under Article 226 or 227 can be exercised. That can be done even suo motu.

5. We examined the entire files and also adverted to the plea of the assessee against the assessment made in the instant case. We are of the view that the order passed by the Agricultural Income Tax Officer and affirmed by the Deputy Commissioner (Appeals) does not suffer from any infirmity. The said orders

cannot also be called unjust or unfair in any manner or to any extent. We shall state the reasons therefor. As stated already, the assessee filed the return on August 1, 1988. Even in the original assessment, he did not co-operate with the Department. Though he was afforded an opportunity to file objections against the pre-assessment notice, he failed to do so. An assessment order was passed against him as proposed in the pre-assessment notice dated August 3, 1988. The assessee took up the matter in appeal before the Appellate Assistant Commissioner, Agricultural Income Tax and Sales Tax, Cannanore, who, by order dated September 25, 1989, ordered a remit. The assessee was given an opportunity to substantiate his pleas. Even after the remit, the assessee was given an opportunity to adduce evidence. He did not do so. He did not even respond to the notice sent by the Agricultural Income Tax Officer dated March 21, 1990. The Agricultural Income Tax Officer served a pre-assessment notice dated April 17, 1990, on the assessee. The assessee was given an opportunity of being heard on April 25, 1990. The assessee pleaded for time. The matter was adjourned to May 5, 1990. Again the assessee pleaded for time. Two weeks'' time was granted. Even so, the assessee did not file any objections to the pre-assessment notice. The officer had no other option but to pass an order of assessment nearly eight months thereafter on December 24, 1990. It is in that order that he gave effect to the proposals contained in the pre-assessment notice and fixed the net income as fixed in the original order of assessment at Rs. 70,000. It was in the appeal filed from the initial assessment order that the assessee put forward a plea based on a lease deed. That was found to be untrue. In revision, the Deputy Commissioner adverted to all the above aspects and came to the conclusion that though the assessee was given ample time to produce further evidence in support of the lease deed and to file his objections, he did not avail of the opportunity. The assessee was given nearly eight months'' time. He did not avail of that opportunity. The Deputy Commissioner found that no evidence was produced before him to prove that the findings of the Assessing Officer were wrong. He also took the view that the lease deed was executed to circumvent the provisions of law and he concurred with the Agricultural Income Tax Officer in the assessment made. The order passed by the Deputy Commissioner dated July 18, 1992, affirming the order passed by the Agricultural Income Tax Officer dated December 24, 1990, is in accord with law. The assessee did not co-operate with the Department. He did not even avail of the opportunities afforded to him at various times. He did not even file objections to the pre-assessment notice sent before the original assessment was made or to the pre-assessment notice sent to him after the remit. There was no evidence before the assessing authority to substantiate the various pleas put forward by the assessee. In such circumstances, the assessing authority had no other option but to estimate the income. He did so. He gave an opportunity to the assessee on that aspect also. The assessee did not avail of the opportunity afforded in that connection. The estimate of the income made by the officer in the order of assessment dated December 24, 1990, was warranted. It was affirmed in revision filed by the assessee, by the Deputy Commissioner by order dated July

18, 1992, and rightly so.

6. On a perusal of the relevant files and the orders that are assailed herein, we are satisfied that no injustice has been caused to the petitioner-assessee. The assessment has been made in accordance with law. It is fair, reasonable and proper. It is due to the assessee''s own omission to avail of the opportunities afforded to him that he is faced with a best judgment assessment. He has to blame himself for his lapses. It is idle for him to contend that the assessing authority or the revisional authority committed any error of law or acted unreasonably.

7. The tax revision case is without merit it is dismissed.

