

(1995) 09 GAU CK 0012

In the Gauhati High Court

Case No : Writ Appeal No. 39 of 1995 in Civil Rule No. 2094 of 1992

Assam Company Ltd. and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Assam Agricultural Income Tax Act, 1939 — Section 2, 29, 30, 43D, 49

Assam Agricultural Income Tax Rules, 1939 — Rule 5, 8

Constitution of India, 1950 — Article 226, 246, 246(3), 366, 366(1)

Citation : (1996) 130 CTR 468 : (1996) 219 ITR 59

Hon'ble Judges : V.K. Khanna, C.J.; A.K. Patnaik, J

Bench : Division Bench

Advocate : V. Gauri Shankar, A. Srivastava and A. Dutta, for the Appellant; S.N. Bhuyan, General, A.R. Banerjee, D.P. Chaliha and B.P. Todi, for the Respondent

Judgement

A.K. Patnaik, J.—This is an appeal against the common judgment of the learned single judge dated November 7, 1994, in Civil Rules Nos. 2094 of 1992 and 2589 of 1994 filed by the petitioners in Civil Rule No. 2094 of 1992.

2. The relevant facts are that appellant No. 1 is a public limited company incorporated under the Companies Act, 1956, carrying on the cultivation, manufacture and sale of tea inside and outside India and appellant No. 2 is one of the directors of appellant No. 1. For cultivation of tea, the appellant is liable to pay tax under the Assam Agricultural Income Tax Act, 1939 (for short, "the Agricultural Income Tax Act"), and for manufacture and sale of tea, it is liable for Income Tax under the Income Tax Act, 1961 (for short, "the Income-tax Act").

3. For the assessment year 1985-86 pertaining to accounting period ending June 30, 1984, appellant No. 1 was assessed under the Income Tax Act by the Inspecting Assistant Commissioner, Assessment Range-II, Guwahati, by order dated February 29, 1988. In the said assessment order, the Inspecting Assistant Commissioner first allowed deduction of Rs. 44,98,378 u/s 80HHC of the Income Tax Act and thereafter applied Rule 8 of the Income Tax Rules, 1962 (for short,

the Income Tax Rules"), and took 40 per cent. of the income from tea as business income. On the basis of the said computation, appellant No. 1 filed a computation before the Agricultural Income Tax Officer, Assam, treating the balance 60 per cent. as income from agriculture and assessment was completed by him on the basis of such computation.

4. For the assessment year 1986-87 pertaining to the accounting period ending June 30, 1985, the Deputy Commissioner of Income Tax (Assessment), Special Range-II, Guwahati, assessed appellant No. 1 under the Income Tax Act and in the assessment order dated August 23, 1994, as rectified u/s 154, the Deputy Commissioner of Income Tax first applied Rule 8 of the Income Tax Rules and determined 40 per cent. of the income from tea as income from business and thereafter allowed deduction of Rs. 99,11,473 u/s 80HHC of the Income Tax Act from such business income. Aggrieved, appellant No. 1 preferred an appeal before the Commissioner of Income Tax (Appeals), Dibrugarh, who following the decision of the Madras High Court in the case of Commissioner of Agricultural Income Tax and Another Vs. Periakaramalai Tea and Produce Co. Ltd. and Others, held that the amount deductible u/s 80HHC of the Income Tax Act should have been, determined with reference to the composite income from tea business before applying Rule 8 of the Income Tax Rules and directed the Assessing Officer to take necessary action in the matter. On receipt of the aforesaid appellate order, appellant No. 1 filed a revised computation showing 60 per cent. of such income from tea as agricultural income before the Agricultural Income Tax Officer, Assam.

5. For the assessment year 1987-88 pertaining to the accounting period ending June 30, 1986, the Deputy Commissioner of Income Tax (Appeals), Special Range-II, Guwahati, assessed appellant No. 1 under the Income Tax Act on March 30, 1990, and in the assessment order dated March 30, 1990, first applied Rule 8 of the Income Tax Rules and determined the income from business as 40 per cent. of the income from tea and thereafter allowed deduction of Rs. 90,00,000 u/s 80HHC of the Income Tax Act. Aggrieved, appellant No. 1 filed an appeal before the Commissioner of Income Tax (Appeals), Dibrugarh, who, following his earlier appellate order dated November 28, 1990, for the assessment year 1986-87 held that the amount deductible u/s 80HHC of the Income Tax Act should have been determined with regard to the composite income from tea business before application of Rule 8 of the Income Tax Rules and directed the Assessing Officer to take necessary action in the matter by his order dated December 21, 1991. On receipt of the said order of the Commissioner of Income Tax (Appeals), appellant No. 1 filed a revised computation of income before the Agricultural Income Tax Officer showing 60 per cent. of the income from tea as agricultural income.

6. The Agricultural Income Tax Officer, Assam, however, issued notices dated August 3, 1992, to appellant No. 1 for reassessment for the assessment year 1985-86 and for assessment for the assessment years 1986-87 and 1987-88,

stating therein that it appears from the records that Rs. 44,98,373, Rs. 1,05,00,000 and Rs. 90,00,000 for the assessment years 1985-86, 1986-87 and 1987-88, respectively, have been allowed by the Indian Income Tax authority u/s 80HHC of the Income Tax Act before application of Rule 8 of the Income Tax Rules, which was detrimental to the Revenue and that he had obtained permission from the appropriate authority to examine the records of appellant No. 1 under the proviso to Section 49 of the Agricultural Income Tax Act for computing the agricultural, income of appellant No. 1 for the said assessment years after refusing to accept the computation made by the Central Income Tax authority.

7. Since the power to refuse to accept the computation made by the Central Income Tax Officer is vested in the Agricultural Income Tax Officer, Assam, in the proviso to Rule 5 of the Assam Agricultural Income Tax Rules, 1939 (for short, "the Agricultural Income Tax Rules"), the appellants moved this court under Article 226 of the Constitution in Civil Rule No. 2094 of 1992 for a declaration that the proviso to Rule 5 of the Agricultural Income Tax Rules to the extent it empowered the Agricultural Income Tax Officer to refuse to accept the computation made by the Central Income Tax authority was ultra vires the Constitution and for a mandamus commanding the respondents to withdraw the proceedings in pursuance of notices dated August 3, 1992, After hearing the parties, however, the learned single judge dismissed the civil rule by judgment dated. November 7, 1994 (for short, "the impugned judgment").

8. Dr. Gauri Shankar, learned counsel for the appellants, submitted that a reading of the impugned judgment would show that the learned single judge has taken an erroneous view that the validity and legality of the proviso to Rule 5 of the Agricultural Income Tax Rules had already been upheld by the Full Bench in the case of Maud Tea and Seed Company Ltd. Vs. Agricultural Income Tax Officer and Others, but in the said case, the vires of the proviso to Rule 5 of the Agricultural Income Tax Rules were not challenged and the observations made by the Full Bench in the said case were at best in the nature of obiter and cannot bind this court. Mr. S.N. Bhuyan, learned Advocate-General, Assam, did not seriously resist the aforesaid submission that the vires of the proviso to Rule 5 of the Agricultural Income Tax Rules were not under challenge in the aforesaid case. On a perusal of the judgment of the Full Bench in the case of Maud Tea and Seed Company Ltd. Vs. Agricultural Income Tax Officer and Others, we find that in that case the vires and the validity of the Explanation to Section 2(a) and the second proviso to Section 8(2) of the Agricultural Income Tax Act which deal with the definition of agricultural income derived from land by the cultivation of tea and computation of such income, respectively, were under challenge and while upholding the validity of the said, provisions of the Agricultural Income Tax Act, the Full Bench observed in paragraph 28 that Rule 5 of the Agricultural Income Tax Rules was in conformity with the Indian Income Tax Act and the Rules framed thereunder and cannot be struck down as unconstitutional but no ratio was laid down therein that the proviso to Rule 5 to the extent it empowered the

Agricultural Income Tax Officer to refuse to accept the computation made by the Central Income Tax authority was valid in law so as to preclude an independent examination of the said question by this court in this case.

9. According to Dr. Gauri Shankar, the proviso to Rule 5 to the extent it empowered the Agricultural Income Tax Officer to refuse to accept the computation made by the Central Income Tax authority is ultra vires the Constitution as well as the Agricultural Income Tax Act. His argument is that Article 366(1) of the Constitution defines "agricultural income" to mean agricultural income as defined for the purposes of the enactments relating to Indian Income Tax and accordingly "agricultural income" in entry 46 in List II of the Seventh Schedule to the Constitution in respect of which the State Legislature has powers under Article 246(3) of the Constitution to enact laws imposing taxes would mean "agricultural income" as defined for the purposes of the enactments relating to Indian Income Tax. Dr. Gauri Shankar submitted that it has now been decided by a series of decisions of the apex court that enactments relating to Indian Income Tax would not only mean the Income Tax Act but also the Income Tax Rules. Section 2(1)(a) of the Income Tax Act defines "agricultural income" and Rule 8 of the Income Tax Rules deals with income from tea which is partly business and partly agricultural income. Rule 8 specifically stipulated that income derived from the sale of tea grown and manufactured by a seller in India shall be computed as if it was income derived from business, and 40 per cent. of such income shall be deemed to be income liable to tax, Dr. Gauri Shankar vehemently argued that only after computation of income derived from sale and manufacture of tea in India is made by the Central Income Tax authority, 40 per cent. is treated as income from business and the balance 60 per cent. of such income has to be accepted as income from agriculture by the Agricultural Income Tax Officer for the purpose of levy of agricultural Income Tax but if the Agricultural Income Tax Officer is permitted to refuse to accept the computation made by the Central Income Tax authority, the constitutional provisions in Articles 246(3) and 366(1) would be contravened. Dr. Gauri Shankar pointed out that the definition of "agricultural income" in Section 2(a) of the Agricultural Income Tax Act enacted by the State Legislature of Assam is the same "as in the Income Tax Act. He brought to our notice the Explanation to Section" 2(a) and the last proviso to Section 8(2) of the Agricultural Income Tax Act and argued that the language in the Explanation to Section 2(a) and the last proviso to Section 8(2) of the Agricultural Income Tax Act made it abundantly clear that agricultural income derived-from land by cultivating tea would mean that portion of the income derived from cultivation, manufacture and sale of tea as computed by the Central Income Tax authority under the Income Tax Act and the Income Tax Rules. Hence, the provisions of the Agricultural Income Tax Act enacted by the State Legislature, Assam, are also consistent with the Constitution as well as the Income Tax Act and the Income Tax Rules with regard to the meaning of agricultural income and the computation thereof where it is derived from the sale of tea grown and manufactured by a seller in the State of

Assam. He further argued that even Rule 5 of the Agricultural Income Tax Rules framed thereunder under the Agricultural Income Tax Act has provided that the portion of the net income worked out under the Income Tax Act and left unassessed as being agricultural shall be assessed as agricultural income, but in the last limb of the proviso to the said Rule 5, a power has been reserved with the Agricultural Income Tax Officer to refuse to accept the computation of the Central Income Tax authority. For appreciating the aforesaid contention of Dr. Gauri Shankar, the relevant portion of Rule 5 of the Agricultural Income Tax Rules is extracted hereinbelow :

"Rule 5.--In respect of agricultural income from tea grown and manufactured by the seller in the Province of Assam, the portion of net income worked out under the Indian Income Tax Act and left unassessed as being agricultural shall be assessed under this Act after allowing such deductions under the Act and the Rules made thereunder so far as they have not been allowed under the Indian Income Tax Act in computing the net income from the entire operation :

Provided that the computation made by the Indian Income Tax Officer shall ordinarily be accepted by the Assam Agricultural Income Tax Officer who may, for his satisfaction u/s 20 of the Assam Agricultural Income Tax Act, obtain further details from the assessee or from the Indian Income Tax Officer, but shall, not without the previous sanction of the Deputy Commissioner of Taxes or when there is no Deputy Commissioner of Taxes, the Assistant Commissioner of Taxes empowered by the Commissioner of Taxes in this behalf, require under the proviso to Section 49, the production of account books already examined by the Indian Income Tax Officer for determining the agricultural income from tea grown and manufactured in Assam or refuse to accept the computation of the Indian Income Tax Officer."

10. According to Dr. Gauri Shankar, the last limb of the aforesaid proviso to Rule 5 empowering the Agricultural Income Tax Officer to refuse to accept the computation made by the Central Income Tax authority is contrary to Article 246 read with Article 366(1) of the Constitution as well as the Explanation to Section 2(a) and the last proviso to Section 8(2) of the Agricultural Income Tax Act. Hence, the court should either strike down the said last limb of the proviso to Rule 5 as ultra vires or read down the same as non-existent according to well-settled principles of statutory interpretation. In support of his aforesaid submissions, Dr. Gauri Shankar relied on the decisions of the Supreme Court in the cases of *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*, ; *Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum, and Tata Tea Ltd. and Another Vs. State of West Bengal and Others*,

11. In reply to the aforesaid submissions of Dr. Gauri Shankar, Mr. S.N. Bhuyan, learned Advocate-General, Assam, submitted that the proviso to Rule 5 of the Agricultural Income Tax Rules has to be read as a whole and in the first limb of the proviso it has been provided that the computation made by the Income Tax

Officer shall be "ordinarily" accepted by the Assam Agricultural Income Tax Officer. Hence, even without the last limb of the proviso to Rule 5 empowering the Agricultural Income Tax Officer to refuse to accept the computation made by the Central Income Tax Officer, the Agricultural Income Tax Officer was still empowered under the first limb of the proviso not to accept the computation made by the Central Income Tax authority in extraordinary cases. No effective relief therefore can be granted to the appellants by striking down the last limb of the proviso to Rule 5 empowering the Agricultural Income Tax Officer to refuse to accept the computation made by the Central Income Tax authority. He also contended that the decisions of the apex court in the cases of *Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum*, and *Tata Tea Ltd. and Another Vs. State of West Bengal and Others*, would show that the Supreme Court has taken a view that under the Kerala Agricultural Income Tax Act, 1950, and the Rules made thereunder, the Agricultural Income Tax Officer was bound to accept the computation made by the Central Income Tax authority but the proviso to Section 49 of the Assam Agricultural Income Tax Act and the proviso to Rule 5 of the Assam Agricultural Income Tax Rules would show that although ordinarily the Agricultural Income Tax Officer is required to accept the computation made by the Central Income Tax authority for the purpose of computing the agricultural income from tea grown and manufactured by a seller in the State of Assam, such computation as made by the Central Income Tax authority was not binding on the Agricultural Income Tax Officer.

12. Before dealing with the aforesaid rival contentions of learned counsel for the parties, it is necessary to discuss the decisions of the apex court on which reliance has been placed by Dr. Gauri Shankar, learned counsel for the appellants. In the case of *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*, , the grievance of the petitioner in that case was that in computing the taxable income in the relevant accounting years for the purpose of assessment of tax under the Kerala Agricultural Income Tax Act, the assessing authority did not allow deduction of the expenses incurred by it in upkeep and maintenance of immature tea plants from which no agricultural income had been derived during the relevant accounting years, though such expenses were deducted by the Income Tax Department in connection with the assessment of Income Tax with respect to the non-agricultural portion of the income from the petitioner's tea estate in those years. Against the assessment orders, the petitioner in that case filed appeals before the Deputy Commissioner of. Agricultural Income Tax, Quilon, While the appeals were pending, an amendment was made in the year 1961 to the Kerala Agricultural Income Tax Act, adding Explanation 2 to Section 5 of the said Act, which stated that a person deriving agricultural income was not entitled to deduction of any expenditure laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income has been derived during the previous year. The said Explanation 2 to Section 5 was challenged on the ground that the State

Legislature of Kerala could not enact such a provision which would make agricultural income under the Kerala Agricultural Income Tax Act different from "agricultural income" as defined in the enactments relating to the Income Tax Act and that the impugned Explanation 2 to Section 5, if applicable to the income from tea plantations would make the income from such plantations for the purpose of the Agricultural Income Tax Act higher than what it would be if computed in accordance with the definition in the Income Tax Act enactment. The Supreme Court did not strike down the impugned Explanation 2 to Section 5 of the Kerala Agricultural Income Tax Act, but held that the said Explanation would not extend to the computation of agricultural income derived from plantations and that in the computation of such agricultural income for the purpose of tax under the Kerala Agricultural Income Tax Act, the income must be taken to be as defined for the purposes of the enactments relating to Indian Income Tax as provided in the Explanation to Section 2 of the said Act. In this decision, therefore, the question as to whether the computation of income derived from tea plantation made by the Central Income Tax authority under the Income Tax Act was binding on the Agricultural Income Tax Officer for the purpose of assessment of agricultural income under the Kerala Agricultural Income Tax Act did not arise for decision. With regard to the power of the State Legislature to make law relating to taxes on agricultural income, the Supreme Court observed (at page 90) :

"It is true, as urged for the respondents, that the State Legislature has full freedom to enact such provisions as it considers fit in respect of tax on agricultural income and that such power includes the power to enact for matters subsidiary and incidental to the taxation of agricultural income. We also agree that the State Legislature is free to provide the method of computation of the taxable agricultural income and is free to allow any particular deductions from the gross income as it considers fit. It is not disputed for the respondent that the power of the State Legislature to enact a law in respect of agricultural income relates only to such agricultural income as is defined in Article 366 of the Constitution."

13. In the case of *Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum*, cited by Dr. Gauri Shankar, the grievance of the appellants in that case was that the Agricultural Income Tax Assistant Commissioner disregarded the computation made by the Central Income Tax assessment authority and on independent computation of the tea income determined the agricultural income of the appellants which was much higher than 60 per cent. of the total tea income assessed by the Central Income Tax authority. On appeal, the Deputy Commissioner of Agricultural Income Tax and Sales Tax, South Zone, Quilon, held that the Agricultural Income Tax Officer could make independent computation of the tea income and was not bound to adopt the assessment made by the Central Income Tax Officer. On further appeal, the Kerala Agricultural Income-tax Appellate Tribunal, Trivandrum, held that the Agricultural Income Tax Officer was bound to accept the computation of

tea income made by the Central Income Tax authority. On a reference being made u/s 60(1) of the Kerala Agricultural Income Tax Act, 1950, the High Court, following its earlier decision in Commr. of COMMISSIONER OF AGRICULTURAL Income Tax, KERALA Vs. PERUNAD PLANTATIONS LTD., , held that the Agricultural Income Tax Officer was not obliged to accept the computation of the tea income made by the Income Tax Officer acting under the Income Tax Act, and it was open to him to compute the income independently applying the relevant provisions of the Income Tax Act and the Agricultural Income Tax Act. On the matter being carried by special leave to appeal, the Supreme Court after discussing its earlier decision in the case of The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others, and overruling the decision of the Kerala High Court in the case of COMMISSIONER OF AGRICULTURAL Income Tax, KERALA Vs. PERUNAD PLANTATIONS LTD.,

"There is no provision in the Kerala Act authorising the Agricultural Income Tax Officer to disregard the computation of the tea income made by the Income Tax authorities acting under the Central Income Tax Acts. The Agricultural Income Tax Officer in making an assessment of agricultural income is bound to accept the computation of the tea income already made by the Central Income Tax authorities and to assess only 60 per cent. of the income so computed less allowable deductions as agricultural income taxable under the Kerala Act."

14. Thus, in the aforesaid case, on an interpretation of the Kerala Agricultural Income Tax Act and the Rules made thereunder, the Supreme Court took a view that the Agricultural Income Tax Officer under the Kerala Act was bound to accept the computation of income from tea already made by the Central Income Tax authority and to assess only the balance 60 per cent. of the income to agricultural Income Tax. But, in the aforesaid case, the Supreme Court also noticed that under some Acts and Rules of some other States, the Agricultural Income Tax Officer was authorised in special cases to disregard the assessment made by the Central Income Tax authority and make fresh computation of the tea income and cautioned that it should not be understood to have said that the assessment made by the Central Income Tax Officer was in any way binding on the Agricultural Income Tax Officer. The relevant observations of the Supreme Court in the said case are quoted hereinbelow (pages 673 and 674 of 69 ITR) :

"Under some Acts and Rules, the Agricultural Income Tax Officer is bound to adopt the assessment of the tea income made by the Central income tax authorities. But under some other Acts and Rules, he is authorised in special cases to disregard this assessment and to make a fresh computation of the tea income. We express no opinion on the construction of these Acts and Rules. For the purpose of these appeals, it is sufficient to say that the Kerala Agricultural Income Tax Act and the Rules do not confer upon the Agricultural Income Tax Officer the power to disregard the assessment of the tea income already made by the Central income- tax authorities."

"For the purpose of these appeals, it is sufficient to say that the Agricultural

Income Tax Officer acting under the Kerala Agricultural Income Tax Act, 1950, is bound to follow the assessment of income by the Central Income Tax Officer under Rule 24 of the Income Tax Rules, 1922, and Rule 8 of the Income Tax Rules, 1962, where such assessment has been made before the Agricultural Income Tax Officer proceeds to make the assessment under the Kerala Act. The question referred to the High Court is answered accordingly. We must not be understood to say that the assessment made by the Central Income Tax Officer under Rule 23 of the Income Tax Rules, 1922, or Rule 7 of the Income Tax Rules, 1962, is in any way binding on the Agricultural Income Tax Officer."

15. In the case of *Tata Tea Ltd. and Another Vs. State of West Bengal and Others*, , the Kerala Agricultural Income Tax (Amendment) Act, 1980, and the Bengal Agricultural Income Tax (Amendment) Act, 1980, were under challenge before the Supreme Court under Article 32 of the Constitution. The Explanation to Section 2(a)(2) of the Kerala Agricultural Income Tax Act, 1950, stated that the agricultural income derived from land used for agricultural purposes by the cultivation of tea leaves meant that portion of the income derived from the cultivation, manufacture and sale, of tea as defined to be agricultural income for the purposes of the enactments relating to the Indian Income Tax and the said Explanation was sought to be deleted by the Kerala Agricultural Income Tax (Amendment) Act, 1980. Similarly, in subsection (2) of Section 8 of the Bengal Agricultural Income Tax Act, 1944, it was provided that notwithstanding anything contained in that Act in the case of tea grown in West Bengal and sold by the grower himself or his agents after manufacturing, the agricultural income derived therefrom shall be deemed to be that portion of the income computed under the Indian Income Tax Act, 1922, on which Income Tax was not payable under the said Act of 1922. In 1979, Sub-section (2A) was inserted in Section 8 of the said Bengal, Agricultural Income Tax Act, 1944, providing for assessment in cases where assessments under the Income Tax Act had not been completed or had been annulled or set aside. But by the Bengal Agricultural Income Tax (Amendment) Act, 1980, the said Sub-sections (2) and (2A) of Section 8 were sought to be deleted. The contention of the petitioners -before the Supreme Court was that by the said two impugned amendments, the State legislatures of Kerala and West Bengal sought to assume the power, competence and jurisdiction to impose agricultural Income Tax on the entire income derived from the sale of tea grown and manufactured by seller and thereby transgressed the constitutional limitation contained in Article 246(3) read with entry 46 of List II of the Seventh Schedule of the Constitution and the apex court after discussing the law laid down in the earlier two cases of *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*, and *Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum*, held that notwithstanding the deletion of the Explanation to Section 2(a)(2) of the Kerala Agricultural Income Tax Act, 1950, and the deletion of Sub-sections (2) and (2A) of Section 8 of the Bengal Agricultural Income Tax Act, 1944, by the two impugned amendments of 1980, the result would still be that

the State Legislatures of Kerala and West Bengal can impose tax in respect of only 60 per cent. of the income derived by the assessee selling tea grown and manufactured by him in India and that such income has to be computed in the manner laid down in the Income Tax Act for computation of agricultural income and that it was, therefore, not necessary to strike down the impugned amendments as ultra vires the Constitution. In the language of Kania J., as he then was, who delivered the judgment on behalf of the court (at page 41) :

"In view of what we have discussed above, it appears to us that although the Explanation to Section 2(a)(2) of the Kerala Agricultural Income Tax Act, 1950, has been deleted by the Amendment Act of 1980, 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 come into 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."

16. The upshot of the aforesaid discussion of the law as laid down by the apex court in the three decisions relied on by Dr. Gauri Shankar is that under Article 246(3) read with entry 46 of List II of the Seventh Schedule of the Constitution, the State Legislatures have powers to make law imposing tax on agricultural income as defined in Article 366(1) of the Constitution. Since Article 366(1) of the Constitution states that agricultural income would mean agricultural income as defined for the purpose of enactments relating to Indian Income Tax and enactments relating to Indian Income Tax includes the Income Tax Act and the Income Tax Rules and Rule 8 of the Income Tax Rules provides that income derived from the sale of tea grown and manufactured by the seller in India shall be computed as income derived from business and 40 per cent. of such income shall be deemed to be liable to tax under the Income Tax Act, only the balance 60 per cent. of such income would be deemed to be agricultural income on which the State Legislature would have powers to levy agricultural Income Tax under the said Article 246(3) read with entry 46 of List II of the Seventh Schedule of the Constitution. The State Legislature would have plenary powers to make law in respect of taxes in relation to the aforesaid 60 per cent. of the income derived from manufacture and sale of tea deemed to be agricultural income, which would include all subsidiary and incidental matters such as method of computation of agricultural income and the deductions that would be permissible from such agricultural income. But the State Legislature would have no power to make any

law which would have the effect of levying tax on the aforesaid 40 per cent. of such income on which tax is payable under the Income Tax Act by virtue of the provisions of the Income Tax Act. The apex court also took the view that the computation of income from tea has to be in accordance with the relevant provisions of the enactments relating to the Indian Income Tax Act and the deductions towards various expenses incurred for the purpose of earning the income as are allowable under the said enactments relating to Indian Income Tax, if disallowed, would result in agricultural Income Tax being imposed on more than the aforesaid 60 per cent. of income from tea deemed as agricultural income as per the Constitution.

17. The contention of Dr. Gauri Shankar is that while the Explanation to Section 2(a) and the last proviso to Section 8 of the Assam Agricultural Income Tax Act are within the powers of the State Legislature to levy tax on agricultural income, the proviso to Rule 5 of the Agricultural Income Tax Rules made thereunder to the extent it empowers the Agricultural Income Tax Officer to refuse to accept the computation made by the Income Tax Officer under the Income Tax Act is inconsistent with the aforesaid Explanation to Section 2(a) and the last proviso to Section 8 of the Agricultural Income Tax Act and is beyond the competence of the State Legislature. In support of the said contention, he placed reliance on the observations of the Supreme Court in the case of Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum, to the effect that the assessment made by the Central Income Tax authority under the Income Tax Act is binding on the Agricultural Income Tax Officer. Mr. S.N. Bhuyan, learned Advocate General, on the other hand, brought to our notice the proviso to Section 49 of the Agricultural Income Tax Act to show that in appropriate cases the Agricultural Income Tax Officer may examine the assessment of the Central Income Tax authority and reject the same and contended that the proviso to Rule 5 of the Agricultural Income Tax Rules was, therefore, consistent with the provisions of the Agricultural Income Tax Act and was within the competence of the State Legislature. The Explanation to Section 2(a), the last proviso to Section 8 and the proviso to Section 49 of the Agricultural Income Tax Act are quoted hereinbelow :

"2. Definitions,--In this Act, unless there is anything repugnant in the subject or context--....

Explanation.--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.

8. Determination of agricultural income mentioned in Sub-clause (2) of Clause (a) of Section 2 :

Provided further that in cases of agricultural income from cultivation and manufacture of tea the agricultural income for the purposes of this Act shall be

deemed to be that portion of the income from cultivation, manufacture and sale which is agricultural income within the meaning of the Indian Income Tax Act and shall be ascertained by computing the income from the cultivation, manufacture and sale of tea as computed for Indian Income Tax Act from which shall be deducted any allowances by this Act authorised in so far as the same shall not have been allowed in computation for the Indian Income Tax Act.

49. Powers of Income Tax authorities to call for papers or documents :

Provided that for the purposes of ascertaining agricultural income in regard to tea, the aforesaid taxing authorities may call for any papers produced or liable to be produced before the taxing authorities administering the Indian Income Tax Act."

18. A reading of the aforesaid Explanation to Section 2(a) would show that for the purpose of the Agricultural Income Tax Act agricultural income derived from cultivation of tea would mean that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income in the Income Tax Act and in the Income Tax Rules and the proviso to Section 8 quoted above makes it clear that such income is to be ascertained by computing income from the cultivation, manufacture and sale of tea as computed for the Indian Income Tax Act. Thus, where computation of the income from cultivation, manufacture and sale of tea is made in accordance with the provisions of the Income Tax Act, the Agricultural Income Tax Officer would have no option but to accept such computation made by the Central Income Tax authority under the Income Tax Act and treat 40 per cent. of such income as business income and the balance 60 per cent. as agricultural income and thereafter allow from such 60 per cent. deemed as agricultural income any allowances authorised by the Agricultural Income Tax Act so far as the same have not been allowed in the computation by the Central Income Tax authority under the Income Tax Act. But where while computing the income from cultivation, manufacture and sale of tea under the Income Tax Act, the Central Income Tax authority acts contrary to the provisions of the Income Tax Act or the Income Tax Rules, such a computation made by the Central Income Tax authority would be liable to be rejected as being contrary to the aforesaid last proviso to Section 8 of the Agricultural Income Tax Act. Under the proviso to Section 49 extracted above, authorities under the Agricultural Income Tax Act have been authorised to call for any paper produced or liable to be produced before the taxing authorities administering the Income Tax Act for the purpose of ascertaining the agricultural income in regard to tea. The said proviso to Section 49 is obviously meant to ensure that the computation of income from the cultivation, manufacture and sale of tea has been made by the Central Income Tax authority in accordance with the Income Tax Act and the Income Tax Rules. A plain reading of Rule 5 of the Agricultural Income Tax Rules makes it clear that in respect of agricultural income from tea grown and manufactured by the seller in Assam, the portion of the net income worked out under the Income Tax Act and left unassessed as agricultural income shall only

be assessed under the Agricultural Income Tax Act and the first limb of the proviso to the said Rule 5 further clarifies that the computation made by the Indian Income Tax Officer shall ordinarily be accepted by the Assam Agricultural Income Tax Officer. On a reading of the aforesaid provisions of the Agricultural Income Tax Act and Rule 5 as a whole, we are of the view that the Assam Agricultural Income Tax Officer can reject a computation made by the Indian Income Tax Officer only where the computation of income has not been made in accordance with the Income Tax Act or the Income Tax Rules, and where the Agricultural Income Tax Officer rejects the computation made by the Central Income Tax authority on the ground that he has, not computed the income from cultivation, manufacture and sale of tea in accordance with the provisions of the Income Tax Act and the Income Tax Rules, he does not transgress the constitutional limits set out in Article 246(3) read with Under Article 366(1) of the Constitution but ensures that no part of the agricultural income as defined in Article 366(1) of the Constitution and in the Income Tax Act and computed in accordance with the Income Tax Act and the Income Tax Rules is left unassessed under the Agricultural Income Tax Act. Hence, the last limb of the proviso to Rule 5 of the Agricultural Income Tax Rules authorising the Agricultural Income Tax Officer to refuse to accept the computation of the Indian Income Tax Officer where such computation has been made contrary to the provisions of the Income Tax Act or the Income Tax Rules is not only consistent with the provisions of the Agricultural Income Tax Act but also within the legislative competence of the State Legislature under Article 246(3) read with Article 366(1) of the Constitution.

19. The decision of the Supreme Court in the case of Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum, on which reliance was placed by Dr. Gauri Shankar was based on the Explanation to Section 2(a)(2) of the Kerala Agricultural Income Tax Act which is similarly worded as the Explanation to Section 2(a) of the Assam Agricultural Income Tax Act. But on a reading of the entire judgment in the aforesaid case we do not find that the Supreme Court noticed in the Kerala Act any provision similar to the proviso to Section 49 of the Assam Agricultural Income Tax Act quoted above and in fact held that there was no provision in the Kerala Act authorising the Agricultural Income Tax Officer to disregard the computation of tea income made by the Central Income Tax authority acting under the Central Income Tax Act and that the Agricultural Income Tax Officer in making the assessment of agricultural income was bound to accept the computation of tea income already made by the Central Income Tax authority. In the said case, the Supreme Court, however, observed that under some Acts and Rules including the Assam Agricultural Income Tax Act and Rules, the Agricultural Income Tax Officer was authorised in special cases to disregard the assessment of the Central Income Tax authority and make a fresh computation of the tea income but did not express any opinion on the construction of such Acts and Rules. In the said case, the Supreme Court further clarified that it should not be understood to have held that the assessment made by the Central Income Tax Officer was in

any way binding on the Agricultural Income Tax Officer. This decision of the Supreme Court in the case of Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum, cited by Dr. Gauri Shankar, therefore, does not support the appellants.

20. The next contention of Dr. Gauri Shankar was that assuming that the last limb of the proviso to Rule 5 of the Agricultural Income Tax Rules was valid in law, an assessment made by the Central Income Tax authority under the Income Tax Act has to be respected by the Agricultural Income Tax Officer because of Article 261(1) of the Constitution which states that full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and every State. In support of this contention, he relied on the decision of the Madras High Court in Kannan Devan Hills Produce Company Limited Vs. State of Madras, as well as the decision of the Supreme Court reported in State of Tamil Nadu Vs. Kannan Devan Hills Produce Co. Ltd., confirming the said decision of the Madras High Court. He also relied on the judgment of the Madras High Court in the case of Kishinchand Chellaram and Others Vs. Joint Commercial Tax Officer and Others, Mr. Bhuyan, learned Advocate-General, however, submitted that the aforesaid decisions were rendered in the particular facts of the cases before the court and were not applicable to the facts of the present case.

21. In the case of Kishinchand Chellaram and Others Vs. Joint Commercial Tax Officer and Others, the Revenue took a stand before the Madras High Court that terylene, terene, dacron, nylon, nylex, etc., were not artificial silk despite the consistent view of the Central Government that these goods were artificial silk, and the Madras High Court took the view that Article 261 of the Constitution was a pointer to the principle that a certain uniformity should prevail with regard to the public acts of the Union and every State and that no distinct, independent and telling circumstances had been brought to the notice of the court for reopening the sales tax assessments in respect of these goods. On a perusal of the decision of the Madras High Court in the case of Kannan Devan Hills Produce Company Limited Vs. State of Madras, we find that the facts were that the petitioner-company in that case owned a tea estate known as the Chittuvarrai Estate comprising 1,043 acres of tea cultivation. Out of the said 1,043 acres, 1,006.60 acres were situated in the State of Kerala, while the balance of 36.04 acres were situated in the State of Madras. The petitioner's case was that Chittuvarrai Estate was worked as one unit as it had only one factory for manufacture of tea grown in Kerala and the Madras portion of the estate. The managerial, supervisory and clerical staff as well as the estate's labour force were combined for the said entire Chittuvarrai Estate. The expenses were incurred for the maintenance of the estate together as one unit and the produce of the entire estate was manufactured and sold together. The accounts were maintained for the whole estate and there was no separate account for the Madras portion of the estate. For the assessment years 1956-57 to 1958-59, the Agricultural Income Tax Officer, Batlagundu, in Madras State made assessments

for the purpose of agricultural Income Tax accepting the computation made by the Central Income Tax Officer and taking only the balance of 60 per cent. for the purpose of agricultural income. But for the assessment year 1960-61, the said Agricultural Income Tax Officer, Batlagundu, came to the conclusion that the basis of computation adopted by the Central Income Tax authority for computing the proportion of income under the Indian Income Tax Act attributable to 36.40 acres of the Chitluvarrai Estate situated in the Madras Estate was incorrect and substituted a different computation for the purpose of calculating the income and after such a computation, he took 60 per cent. of it as agricultural income assessable in the Madras State. For the assessment years 1956-57 to 1958-59, the Agricultural Income Tax Officer also issued notices u/s 35 of the Madras Agricultural Income Tax Act for reassessment. The petitioner moved the Madras High Court and contended that the computation made by the Central Income Tax Officer was binding on the Agricultural Income Tax Officer for computing agricultural income from tea. In support of this contention, the petitioner, inter alia, relied on Article 261(1) of the Constitution. The High Court took the view that in the facts of that case the Agricultural Income Tax Officer had refused to accept the computation made by the Central Income Tax Officer for totally unsatisfactory and unjustifiable reasons and set aside the order of assessment, but did not give any finding on the abstract question that computation made by the Central Income Tax Officer was legally binding on the Agricultural Income Tax Officer. On the matter being carried to the Supreme Court by the State of Tamil Nadu Vs. Kannan Devan Hills Produce Co. Ltd., the Supreme Court took note of the fact that under the proviso to Rule 7 of the Madras Agricultural Income Tax Rules, which is similarly worded as the proviso to Rule 5 of the Assam Agricultural Income Tax Rules, the Agricultural Income Tax Officer has been enjoined to ordinarily accept the computation made by the Central Income Tax Officer and the High Court went into the facts and figures of various assessments and came to the conclusion that the Agricultural Income Tax Officer had not given sufficient reasons for not accepting the Central Income Tax Officer's computation and on these facts did not interfere with the judgment of the High Court and thought it unnecessary to express any opinion on the question whether in every case the Agricultural Income Tax Officer is bound to accept the computation made by the Central Income Tax authorities.

22. The real question, therefore, is whether the reason given by the Agricultural Income Tax Officer, Assam, in the three impugned notices dated August 3, 1992, for proposing to compute the agricultural income of appellant No. 1 after refusing to accept the assessments made by the Central Income Tax authority are such as would call for interference by this court under Article 226 of the Constitution. According to Dr. Gauri Shankar, learned counsel for the appellants, the only reason given in the three impugned notices is that a circular issued by the Central Board of Direct Taxes states that the deductions allowable under Chapter VI-A of the Income Tax Act are to be allowed after application of Rule 8 of the Income Tax Rules, whereas it appears from the records that deductions u/s

80HHC falling under Chapter VI-A of the said Act to the extent of Rs. 44,98,373, Rs. 1,05,00,000 and Rs. 90,00,000 for the assessment years 1985-86, 1986-87 and 1987-88, respectively, had been allowed by the Indian Income Tax authority before application of Rule 8 of the Income Tax Rules. Mr. Bhuyan, learned Advocate-General, on the other hand, submitted that a reading of the impugned notices would show that it is not the circular issued by the Central Board of Direct Taxes which was the basis for the impugned notices. According to him, the actual reason is that the action of the Indian Income Tax authority in allowing the aforesaid deduction u/s 80HHC of the Income Tax Act before application of Rule 8 of the Income Tax Rules was contrary to law and the circular issued by the Central Board of Direct Taxes was only cited in the impugned notices in support of the said reason. We find full force in the said submission of Mr. Bhuyan, the learned Advocate-General. Bereft of all superfluity, the reason given by the Agricultural Income Tax Officer, Assam, in the three impugned notices for proposing to compute the agricultural income of the appellant for the three assessment years in question after refusing to accept the computation made by the Central Income Tax authority is that the Central Income Tax authority had allowed deductions u/s 80HHC before application of Rule 8 of the Income Tax Rules which was not permissible under law.

23. Dr. Gauri Shankar, learned counsel for the appellants, however, submitted that this view taken by the Agricultural Income Tax Officer, Assam, that deductions under Chapter VI-A of the Income Tax Act and in particular, Section 80HHC thereof can only be allowed after application of Rule 8 of the Income Tax Rules as well as the circular of the Central Board of Direct Taxes cited in favour of the said reason are contrary to the law laid down by the Madras High Court in the case of *Commr. of Commissioner of Agricultural Income Tax and Another Vs. Periakaramalai Tea and Produce Co. Ltd. and Others*, wherein a Division Bench of the Madras High Court has held that the income derived from the sale of tea grown and manufactured by the seller in India shall be computed as income derived from business in accordance with the provisions of the Income Tax Act after, allowing deductions including those in Chapter VI-A of the said Act and 40 per cent. of such income is chargeable to Income Tax and the balance 60 per cent. is to be treated as agricultural income for the purpose of agricultural Income Tax. Dr. Gauri Shankar further submitted that the aforesaid decision of the Division Bench of the Madras High Court has been followed by the Madras High Court in the case of *Stanmore (Anamallay) Stanmore (Anamallay) Estates Ltd. Vs. Government of Madras*, We have carefully read the aforesaid two judgments of the Division Bench of the Madras High Court and we respectfully disagree with the broad proposition laid down therein that deductions under Chapter VI-A of the Income Tax Act have to be first allowed for computing the business income from tea and thereafter 40 per cent. of such income is to be treated as business income liable to Income Tax under the Income Tax Act and the balance 60 per cent. is to be taken as agricultural income for the purposes of agricultural Income Tax. In the three decisions of the Supreme Court in the cases

of The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others, ; Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum, and Tata Tea Ltd. and Another Vs. State of West Bengal and Others, , the Supreme Court took a view that the consequence of Rule 24 of the Income Tax Rules, 1922, and Rule 8 of the Income Tax Rules, 1962, was that the income derived from the sale of tea grown and manufactured by a seller in India has to be computed first in accordance with the provisions of Section 10 of the Indian Income Tax Act, 1922, or Sections 28 to 44 of the Income Tax Act, 1961, by allowing deductions towards expenses incurred for the purpose of earning such income and thereafter 40 per cent. of such income so computed has to be treated as income from business and liable for Income Tax and 60 per cent. of the income deemed to be agricultural income liable for agricultural Income Tax after allowing deductions permissible under the law relating to agricultural income tax. In the said three decisions of the apex court, there was no discussion of deducting any allowances under the Income Tax Act such as those falling under Chapter VI-A of the said Act which were not of the nature of expenses incurred by an assessee for the purpose of earning such income from sale of tea grown and manufactured in India. This would be clear from the following observations of the Supreme Court in the case of The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others,

"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 the business. Consequently, the income would be computed in accordance with the provisions of Section 10 of the Income Tax Act. Clause (xv) of Sub-section (2) of Section 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 be deemed to be "agricultural income" within the meaning of that expression in the Income Tax Act."

25. Similarly, in the case of Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum, the apex court reasoned as follows (page 672) ;

"The question arising in these appeals is whether the Agricultural Income Tax Officer making an assessment of agricultural income under the Kerala Agricultural Income Tax Act is bound to accept the assessment of the income which has already been made by the Central Income Tax authorities under Rule 24 of the Income Tax Rules, 1922, read with Section 10 of the Indian Income Tax Act, 1922, or under Rule 8 of the Income Tax Rules, 1962, read with Sections 28

to 44 of the Income Tax Act, 1961. We think that this question should be answered in the affirmative. Income from sale of tea grown and manufactured by the seller is derived partly from business and partly from agriculture. This income has to be computed as if it were income from business under the Central Income Tax Act and the Rules. Forty per cent. of the income so computed is deemed to be income derived from business and assessable to non-agricultural Income Tax. . . . The agricultural income taxable under the Kerala Act is 60 per cent. of the income so computed after deducting therefrom the allowances authorised by Section 5 of the Kerala Act in so far as the same has not already been allowed in the assessment under the Central Income Tax Act."

26. And in the case of Tata Tea Ltd. and Another Vs. State of West Bengal and Others, the apex court explained (page 33) :

"A perusal of the aforesaid Rule 8(1) makes it clear that under the said rule, income from the sale of tea grown and manufactured by a seller in India has to be computed as if it were income derived from business which would imply that the deductions allowable under the Act of 1961 in respect of income derived from business would be allowable in the case of income derived from the sale of tea grown and manufactured by a seller and further allowance would be granted as set out in Rule 8(2) and 40 per cent. of the income so computed would be deemed to be income liable to the levy of Income Tax and the balance of the income would be liable to tax as agricultural income subject to such further deductions as the law pertaining to the levy of agricultural Income Tax might allow."

27. Thus, deductions under the Income Tax Act which were in the nature of expenses incurred for the purpose of earning income derived from sale of tea grown and manufactured by the seller were only to be allowed in the computation of such income before application of Rule 8 of the Income Tax Rules, 1962, and allowances which were not really in the nature of expenses were not to be deducted from the computation of such income before application of Rule 8. This view is further reinforced by the provision in Section 29 of the Income Tax Act to the effect that income from profits and gains of business shall be computed in accordance with, Sections 30 and 43D of the Income Tax Act.

28. Dr. Gauri Shankar, however, submitted that a deduction does not cease to be an item of expenditure merely because it is not included in Sections 28 to 43D of the Income Tax Act, 1961, and is included in Chapter VI-A of the Income Tax Act, 1961, and that arrangement of Sections in one Chapter or the other in the Income Tax Act cannot be conclusive as to the nature of a particular allowance. Hence, we have to consider whether the allowance u/s 80HHC of the Income Tax Act is by way of deduction for expenses incurred for earning the income from sale of tea grown and manufactured by a seller. The relevant portion of the said Section 80HHC is extracted hereinbelow ;

"80HHC. (1) Where an assessee, being an Indian company or a person (other

than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this Section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the (profits) derived by the assessee from the export, of such goods or merchandise".

29. A bare reading of Section 80HHC quoted above shows that it is not an item of expense incurred for earning profits from the sale of tea grown and manufactured by a seller but is a deduction of profits derived by the assessee from export of goods or merchandise from India. In our view the allowance u/s 80HHC cannot be allowed as deduction for computing income derived from the sale of tea grown and manufactured by the seller before application of Rule 8 of the Income Tax Rules, 1962, and that out of the income computed without deducting the allowance under the said Section 80HHC of the Income Tax Act, 40 per cent. is to be treated as income derived from profits and gains of business and the allowance u/s 80HHC can be allowed only out of such profits and gains of business constituting the 40 per cent. of the income. The balance 60 per cent. of the income is to be deemed as agricultural income and out of such agricultural income only such allowances as are permissible under the Agricultural Income Tax Act can be made. This is because the said 60 per cent. of the income deemed as agricultural income falls within the domain of the State Legislature out of which no further allowances not of the nature of expenses can be allowed except those which are permissible under the Agricultural Income Tax Act. In the instant case, in the three impugned notices it is alleged that the allowances of Rs. 44,98,373, Rs. 1,05,00,000 and Rs. 90,00,000 u/s 80HHC of the Income Tax Act for the assessment years 1985-86, 1986-87 and 1987-88 have been made before application of Rule 8 of the Income Tax Rules and not from the 40 per cent. of the income after application of the said Rule 8. It is, therefore, difficult for us to hold that the reason given in the impugned notices for proposing to compute the agricultural income after refusing to accept the computation of the Indian Income Tax Officer is totally unsatisfactory or unjustifiable. On the contrary, we find from the said reason given in the impugned notices that the computation made by the Indian Income Tax Officer is proposed to be rejected under the proviso to Rule 5 of the Agricultural Income Tax Rules because the said computation has been made contrary to the provisions of the Income Tax Act and the Income Tax Rules and the last proviso to Section 8 of the Agricultural Income Tax Act.

30. Dr. Gauri Shankar lastly contended that so far as the assessment year 1985-86 is concerned, the assessment of agricultural income had been completed and the impugned notice dated August 3, 1992, for the said assessment year was for reopening such assessment already done and it is settled by the Privy Council in the case of CIT v. Mahaliram Ramjidas [1940] 8 ITR 442 that before initiating proceedings u/s 34 of the Indian Income Tax Act, 1922, the Income Tax Officer must, on the information before him, and in good faith consider that he has good ground for believing that the assessee's profits

for some reason escaped assessment. He also cited the decision of the Supreme Court in the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, in which it has been held that the reasons for the formation of such belief for reopening an assessment must have rational connection with the escapement of income from assessment because of his failure to disclose truly all material facts, and although the court cannot examine the sufficiency or adequacy of the material before the Assessing Officer for initiating proceedings for reopening, the assessment, it can examine the relevancy of the material before the Assessing Officer to find out whether the reasons given by the Assessing Officer for reopening the assessment have any nexus with the escapement of income and in the present case the reason given by the Agricultural Income Tax Officer in the impugned notice dated August 3, 1992, has no such rational nexus with the escapement of the agricultural income of the appellant No. 1 from assessment.

31. While we agree with Dr. Gauri Shankar that the reason for reopening an assessment u/s 30 of the Agricultural Income Tax Act must have a nexus with escapement of agricultural income, we are of the view that Section 30 of the Agricultural Income Tax Act is not hedged in with the limitations of Section 34 of the Indian Income Tax Act, 1922. The said Section 30 is quoted hereinbelow :

"30. Income escaping assessment--If for any reason any agricultural income chargeable to agricultural Income Tax has escaped assessment for any financial year, or has been assessed at too low a rate or has been the subject of undue relief under this Act, the Superintendent of Taxes or Agricultural Income Tax Officer may, at any time within eight years of the end of that financial year serve on the person liable to pay agricultural Income Tax on such agricultural income or, in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 19, and may proceed to assess or reassess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

32. As per the aforesaid section, if for any reason any agricultural income chargeable to agricultural Income Tax has escaped assessment for any financial year, the Agricultural Income Tax Officer may proceed to reassess the income. In the case of Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, Section 26 of the Bihar Agricultural Income Tax Act, which is similarly worded as the aforesaid Section 30 of the Assam Agricultural Income Tax Act, came in for interpretation before the apex court. It was contended that unless fresh information comes into the possession of the assessing authority, no reassessment can be done by the Assessing Officer and the decisions u/s 34 of the Indian Income Tax Act, 1922, were cited in support of the aforesaid contention. The Supreme Court rejected the said contention and held (page 394) :

"We may say at once that the words of Section 26 of the Act do not involve possessing of or coming by some fresh information. The section says :

"If for any reason any agricultural income chargeable to agricultural Income Tax has escaped assessment for any financial year the Agricultural Income Tax Officer may proceed to assess such income. . . ."

The use of the words "any reason" which are of wide import dispenses with those conditions by which Section 34 of the Indian Income Tax Act is circumscribed. . . ."

33. It is stated in the impugned notice for the assessment year 1985-86 that it appeared from the record that Rs. 44,98,373 has been allowed by the Indian Income Tax authority u/s 80HHC before application of Rule 8 of the Income Tax Rules. As discussed above, such allowance u/s 80HHC of the Income Tax Act before application of Rule 8 of the Income Tax Rules has resulted in allowing a deduction of Rs. 44,98,873, from the 60 per cent. of the income of appellant No. 1 deemed as agricultural income from which only the allowances authorised by the Agricultural Income Tax Act were permissible, and the said amount of Rs. 44,98,373 has escaped assessment under the Agricultural Income Tax Act. There was thus a reason indicated in the impugned notice u/s 30 of the said Act which had a rational nexus with escapement of agricultural income from agricultural Income Tax for the assessment year 1985-86 and it is not possible to take a view that the Agricultural Income Tax Officer, Assam, had no jurisdiction to issue the same.

34. For the reasons stated above, the appellants are not entitled to any of the reliefs claimed in the writ petition as well as in this appeal. The appeal is accordingly dismissed and the interim order of stay passed on February 9, 1995, is vacated. But considering the facts and circumstances of the case, the parties shall bear their own costs.