
(1956) 05 PAT CK 0008

In the Patna High Court

Case No : Misc. Judicial Case No. 576 of 1953

Badri Prasad Kashari Lal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-05-1956

Acts Referred:

Bihar Agricultural Income Tax Act, 1938 — Section 18(4), 7(1)
Bihar Agricultural Income Tax Rules, 1938 — Rule 3

Citation : AIR 1957 Patna 180 : (1956) 30 ITR 433

Hon'ble Judges : Ramaswami, C.J; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Shreedeo Mishra, for the Appellant; The Government Advocate, for the Respondent

Judgement

1. In this case the assessee is a Hindu undivided family, called Badri Prasad Keshari Lal. For the assessment years 1944-45 and 1945-46 the Agricultural Income Tax Officer computed the income of the assessee to be Rs. 6,050 and Rs. 7,315, respectively. The assessee had filed a return of his income for the two assessment years in the form prescribed in Schedule B (1). The assessee exercised his option u/s 7 (1) (a) for being assessed on a multiple basis, but the same was not accepted by the Agricultural Income Tax Officer, because the assessee failed to produce material to show what was the correct rental of the rent paying lands.

The Agricultural Income Tax Officer preferred to make an assessment u/s 7 (1) (b) read with Rule 3 of the Bihar Agricultural Income Tax Rules, 1938. The assessee then preferred appeals to the Assistant Commissioner of Agricultural Income Tax, but the appeals were dismissed and the order of assessment made by the Agricultural Income-tax Officer was confirmed. The assessee then took the matter in revision to the Commissioner, but his petition was rejected.

2. In this state of facts the Board, of Revenue has submitted the following question of law for the opinion of the high Court u/s 25 (1) of the Bihar

Agricultural Income Tax Act:

"Was the Agricultural Income Tax Officer bound to assess the agricultural Income Tax on a multiple basis according to the option expressed by the assessee u/s 7 (1) (a) of the Act?"

3. On behalf of the assessee Mr. Shreedeo Mishra, put forward the argument that the provisions of Section 7 (1) (a) were mandatory and once the assessee had exercised his option for being assessed on multiple basis it was not open to the Agricultural authorities to make an assessment in any other manner. Learned counsel has relied upon the language of Section 7 (1) which states:--

"V. Determination of agricultural income mentioned in Clause (a) (2) of Section 2- -- (1) The agricultural income Mentioned in Sub-clause (2) of Clause (a) of Section 2 shall, at the option of the assessee, --

(a) be deemed, for the purposes of assessment to agricultural Income Tax, to be a multiple,

(i) in the case of land assessed to rent, of the rent of such land,

(ii) in the case of land not assessed to rent, of the cess valuation of such land; or

(b) be assessed on the net amounts of such income determined in the prescribed manner."

It is also necessary to quote Section 7 (2) in this connection:--

"7 (2). The multiple referred to in Clause (a) of Sub-section (1) shall be such multiple not exceeding eight as may be fixed for each district by the Board."

We are, however, unable to accept the argument of the learned counsel for the assessee as correct, in the circumstances, of this case. After the assessee had filed the return in the form prescribed in Schedule B (1), the Agricultural Income Tax Officer required the assessee to produce material in support of the rental of the lands which the assessee had given in the return. But the assessee did not comply with the request of the Agricultural Income Tax Officer and failed to produce any evidence whatever in support of the rental he had mentioned in the return. It was, therefore, open to the Agricultural Income Tax Officer to act under the provisions of Section 18 (4) of the Act, which is in the following terms:--

"18 (4), If the principal officer of any company or other person fails to make a return under Sub-section (1) or Sub-section (2) of Section 17, as the, case may be, or, having made the return, fails to comply with all the terms of the notice issued under Sub-section (2) of this section, or to produce any evidence required under Sub-section (3) of this section, the Agricultural Income Tax Officer shall make the assessment to the best of his judgment;

Provided that before making such assessment, the Agricultural Income Tax Officer may allow the assessee such further time as he thinks fit to make the return or comply with the terms of the notice or to produce the evidence."

Indeed, that was the only course open to Agricultural Income Tax Officer in the face of the fact that the assessee failed to produce any material in support of the rental of the lands in question. Had the assessee produced in this case material to support the particulars of the rental. It could have been validly argued that the option exercised by the assessee for being assessed on multiple basis u/s 7 (1) (a) was final and it was not open, to the Agricultural Income Tax Officer to make the assessment on any other basis.

But the admitted fact is that in the present case the assessee had failed to produce material in respect of the details of rental mentioned in his return. It follows, therefore, that under the provisions of Section 18 (4) the Agricultural Income Tax Officer was entitled to make the assessment of his income "to the best of his judgment". It is obvious that the statutory provisions embodied in Section 7 (1) (a) and Section 7 (1) (b) have to be read in the context of Section 18 (4) of the statute.

It is extravagant to argue that even if the assessee failed to produce material to support the particulars of the rental mentioned in his return, still the Agricultural Income Tax Officer should make the assessment on a multiple basis. On the other hand, we are satisfied that the discretion given to the Agricultural Income Tax Officer u/s 18 (4) for making the assessment "to the best of his judgment" cannot be qualified in any such manner. We consider that it is open to the Income Tax Officer in such a case to proceed u/s 7 (1) (b) and to make the computation of the assessable agricultural income in accordance with the provisions of Section 7 (1) (b) read with Rule 8 of the Bihar Agricultural Income Tax Rules, 1938.

In our opinion, that is the right construction to be placed on the language of Section 7 (1) (a) and Section. 1 (1) (b). As we have pointed out, the provisions of Section 7 (1) (a) and Section 7 (1) (b) are not absolute and must be, read in the context of Section 18 (4) of the Act. If our view as to the construction of Section 7 (1) (a) and Section 7 (1) (b) is correct, the Agricultural Income Tax Officer in this case was legally right in making computation of the assessable agricultural income in accordance with the manner given in Section 7 (1) (b) read with Rule 3 of the Bihar Agricultural Income Tax Rules.

4. On behalf of the assessee reference was made to two decisions of this Court, namely, Government of Bihar v. Motihari Estate Ltd. ILR 25 Pat 161: (AIR 1946 Pat 353) (SB) (A) and Province of Bihar Vs. The Proprietors of Ram Nagar Estate, . But we do not think that the ratio of these decisions has any application to the present case. In the first case ILR 25 Pat 161 :(AIR 1946 Pat 353) (SB) (A), the assessment was made by the Agricultural Income Tax Officer u/s 7 (1) (b), though the assessee exercised his option and preferred to be assessed u/s 7 (1) (a) and also furnished materials to that effect in the return.

The circumstance that assessee furnished materials in support of his return made in the form prescribed in Schedule B (1) is a distinguishing circumstance. The

assessment in that case was made u/s 18 (3) and no question arose of the interpretation of Section 18 (4). It is manifest that the material facts of the present case are totally different. In the other case Province of Bihar Vs. The Proprietors of Ram Nagar Estate, , also the distinctive feature is that there was no failure on the part of the assessee to comply with any demand for information required in connection with the assessment made u/s 7 (1) (a).

It is true that the authorities in that case had asked the assessee to supply the cess valuation papers, but Meredith, J., rightly pointed out that the assessee was not bound to supply those documents u/s 44 of the Act and in any case the demand for cess papers was relevant to proceedings for assessment u/s 7 (1) (b) and not for proceedings for assessment u/s 7 (1) (a).

It is, therefore, clear that there was no failure on the part of the assessee to produce materials to support his return filed u/s 7 (1) (a). We do not see how the principle laid down in this case has any relevance for the determination of the problem present in the present case. Learned counsel for the assessee, however, relied upon a passage in the judgment of Meredith, J., at p 1016 (of ILR): (at p 92 of AIR). That passage is to the following effect:--

"No doubt where information called for is not supplied, the Income Tax Officer u/s 18 (4) may make the assessment to the best of his judgment. But as I read the two sections taken together he must make it to the best of his judgment in accordance with the option previously exercised, and which is expressed in Section 7 as an option free from any qualifications or conditions whatsoever, much less the supply of any particular papers."

With great respect, we do not think that the proposition laid down by the learned Judge in this passage is correct. As we have pointed out already, the discretion given to the Agricultural Income Tax Officer u/s 18 (4) to make an assessment to the best of his judgment cannot be qualified or controlled because of the exercise of the option by the assessee given to him u/s 7 (1) (a) or Section 7 (1) (b).

If the assessee fails to furnish any material to support his return made in the form prescribed in Schedule B (1) or to support the rental mentioned in his return, it is difficult to see how the Agricultural Income Tax Officer can make an assessment to the best of his Judgment, according to the option previously exercised by the assessee, namely, the option to be assessed on the multiple basis. We do not, therefore, think that the proposition laid down by Meredith, J. in the passage lays down the correct law.

5. For the reasons we have expressed above, we hold that in the circumstances presented in this particular case the Agricultural Income Tax Officer was not bound to assess the agricultural Income Tax on the multiple basis, according to the option expressed by the assessee u/s 7 (1) (a) of the Act. We accordingly answer the question of law in favour of the State of Bihar and against the assessee. The assessee must pay the cost of hearing of this reference. Hearing fee Rs. 250.