(1968) 09 KL CK 0014

In the High Court Of Kerala

Case No : Income-tax Referred Case No''s. 51 and 52 of 1967

B.F. Varghese (No. 2) APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 13-09-1968

Acts Referred:

Citation : (1969) 72 ITR 726

Hon'ble Judges : P. Narayana Pillai, J;M.U. Isaac, J

Bench : Division Bench

Advocate : S.A. Nagendran, N. Krishna Pillai, P.A. Mohammed and N.N.D. Pillai, for the Appellant; Government Pleader, for the Respondent

Judgement

Isaac, J.—These two references have been made by the Kerala Agricultural Income Tax Appellate Tribunal u/s 60(3) of the Agricultural Income Tax Act, 1950, as directed by this court on applications made by the assessee, who is the same in both the cases. ITR Case No. 51 relates to the assessment year 1960-61, while the other case relates to the year 1961-62. There is only one question referred in each case; and that question is the same, and it reads as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the yield of pepper returned by the assessee and confirming the estimated assessment of the yield by the Appellate Assistant Commissioner,"

2. The assessee owns a pepper plantation, a small rubber estate, some paddy lands and his residential property. For the assessment year 1960-61, the assessee returned a total income of Rs. 1,789.90. The assessee maintains proper accounts for the pepper plantation and rubber estate. The Income Tax Officer rejected the accounts, and made a best judgment assessment, fixing the total income at Rs. 28,543.17. The income from paddy was fixed at Rs. 948 being the value of 316 paras of paddy; and the income from the residential property was fixed at Rs. 25. There was no dispute about these two items. According to the

books of account of the assessee, the total yield of pepper during the previous year was 8 candies and 10 thulams ; and the Income Tax Officer estimated it at 20 candies. The assessee filed an appeal before the Appellate Assistant Commissioner. He held that there was no reason to reject the accounts of the assessee regarding the income from rubber ; and that the assessee''s return in this respect should be accepted. He did not consider the acceptability of the accounts of the pepper plantation. At the same time, he held that the yield from pepper should be fixed at 18 candies as was done for the assessment year 1959-60. Accordingly, he set aside the assessment, and remitted the case to the Income Tax Officer for making a fresh assessment as directed by him. The assessee appealed from the above order to the Agricultural Income Tax Appellate Tribunal. The appeal was dismissed, holding that there was sufficient ground to reject the assessee''s books of account; and that the estimate made by the Appellate Assistant Commissioner regarding the yield of pepper was reasonable.

3. For the assessment year 1961-62 the Agricultural Income Tax Officer estimated the total agricultural income of the assessee at Rs. 36,395 as against Rs. 4, 128.39 returned by the assessee, after rejecting his books of account. The pepper yield was estimated by him at 18 candies, as in the previous year, as against 8 candies 16 thulams and 15 lbs. disclosed by the assessee''s accounts. The assessee went in apppeal before the Appellate Assistant Commissioner. As per the previous assessment year, he held that there was no reason to reject the assessee''s accounts regarding income from rubber, and that the accounts should be accepted in this respect. Regarding the income from pepper, he did not consider the acceptability of the accounts ; and he estimated the yield at 18 candies as was done for the previous assessment. Accordingly, he set aside the order of assessment and remitted the case to the Income Tax Officer for making a fresh assessment. The assessee filed an appeal before the Appellate Tribunal claiming that his books of account relating to the pepper estate should also have been accepted and the income determined accordingly. It was agreed before the Appellate Tribunal that this appeal may be disposed of in accordance with the finding of the Tribunal in the assessee''s appeal in respect of the assessment year 1960-61. Accordingly, the Tribunal dismissed the appeal in accordance with its decision in the previous appeal. We are concerned in these two cases only with the rejection of the assessee''s accounts relating to his pepper estate. The reasons for the Tribunal''s decision is contained in the Tribunal''s order, which it has extracted in the order of reference in ITR Case No. 51 :

"The yield returned from 11,200 yielding pepper vines was 8 candies 10 thulams. The assessing authority estimated the yield at 20 candies on the ground that enquiries conducted by the Agricultural Income Tax Officer, Taliparamba, revealed that 3/4 kgms. of pepper could be obtained from each pepper vine of the locality. The Appellate Assistant Commissioner, in appeal, reduced the yield to 18 candies based on the estimate for the previous year. The appellant''s learned representative strenuously urges that the estimate was made by the Agricultural Income Tax Officer on the basis of certain inspections and enquiries and that no such inspection or enquiry was conducted and that no estimate could be made on mere impression gathered by the enquiry or inspection as laid down in the decision of the High Court of Kerala in DALJIT SINGH Vs. COMMISSIONER OF Income Tax., . The Appellate Assistant Commissioner has found that no inspection or enquiry as stated in the assessment order had been conducted. The assessment records produced before us also do not reveal any such inspection or enquiry. The Appellate Assistant Commissioner has, therefore, discarded this and reduced the estimate to 18 candies as in the previous year. There is no contention before us that the yield for the previous year was not 18 candies. There is also no contention as to the number of vines and it is also conceded that the number is correct. The vines are seen to be in developing stage as revealed by records. The yield returned for the year in appeal is only 8 candies 10 thulams which is less by more than 50 per cent. of the yield for the previous year. The appellant had returned no income from paddy and from miscellaneous produces in the residential compound and the income from these had been estimated and this is not disputed. This shows the accounts produced are not acceptable as such. These facts, we feel, give positive evidence that the accounts produced do not represent actuals of income received by the appellant and that, therefore, there is nothing incorrect in rejecting the accounts. The Appellate Assistant Commissioner has not upheld the estimate of income from pepper on the inspection and enquiries referred to by the assessing authority but on the basis of the yield for the previous year. We, therefore, find nothing incorrect in this and we accordingly confirm the estimate of 18 candies."

4. It is obvious from the order of the Appellate Tribunal that it rejected the assessee''s books of account and determined the income from pepper by estimate for two reasons. They are :

(i) the yield disclosed by the accounts is very low, when compared to the yield in the previous accounting year ; and

(ii) the assessee did not show in the return submitted by him the income from paddy and other miscellaneous produce from his residential compound.

5. As regards the first ground, the comparison is to the yield as determined by the Income Tax Officer to the best of his judgment, and not to the yield as disclosed by the assessee''s books of account. The fact that the yield disclosed by the books of account does not satisfactorily compare with the yield as estimated by the assessing authority for the previous accounting year is no ground for rejecting the accounts of an assessee. When the books of account are found unacceptable for valid reasons, the estimate of income made for the previous accounting year may provide in certain cases a guide in determining the income of the subsequent year on a best judgment basis. It is a well-known fact that the yield from pepper vines would vary from year to year to a large extent, depending on several facts. So, in the case of pepper, the yield obtained in one year would not furnish any guidance for estimating the yield for any subsequent year.

6. The second ground stated by the Appellate Tribunal, namely, that the assessee''s accounts cannot be accepted as he has not included in his return the income from paddy and the miscellaneous produce from the residential compound is one stated by the Tribunal for the first time in its order. The income from paddy was only Rs. 948 being the value of 316 paras of paddy, and the income from miscellaneous produce was only Rs. 25 as estimated by the Income Tax Officer. The fact that the assessee did not maintain any accounts with regard to these two items of income, which is comparatively negligible, is no ground for rejecting the assessee''s accounts relating to his pepper estate. It may be remembered that the assessee''s accounts relating to the rubber estate was accepted, and the fact that the assessee''s return did not contain the income from paddy and miscellaneous produces did not stand in the way of rejecting the rubber accounts.

7. In our view, the two grounds stated by the Appellate Tribunal do not constitute any valid reason for rejecting the books of account of the assessee. In the absence of any omission, irregularity or other defect in the method of maintaining the accounts, or positive evidence to show that the accounts do not disclose the whole income of the assessee, his books of accounts cannot be rejected. No such thing has been pointed out or relied on by the Appellate Tribunal.

8. In the result, we answer the question referred in these cases in the negative and in favour of the assessee. In the circumstances of this case, we make no order as to costs. A copy of this judgment will be forwarded in each case to the Appellate Tribunal as required by Section 60(6) of the Act.