

(1971) 10 KAR CK 0013

In the Karnataka High Court

Case No : Civil Revision Petition No. 472 of 1969

C.G. Chandrashekar

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 21-10-1971

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 10 (1) (a)

Citation : (1973) 87 ITR 187

Hon'ble Judges : G.K. Govind Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : U.L. Narayana Rao, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Govinda Bhat, J.—This is a revision petition by an assessee u/s 55 of the Mysore Agricultural Income Tax Act, 1957. The assessment year is 1964-65. Under a will dated July 27, 1962, executed by P. Kunhi Kannan, a planter residing at Virajpet in Coorg District, the petitioner was appointed as trustee of the estate of the deceased. The beneficiaries under the will are all the sons of the testator. The petitioner contended before the assessing authority, as also before the Tribunal, that section 10(1)(a) of the Act is applicable to his case and the amount of tax has to be determined in the manner provided therein. The Tribunal rejected that contention on the ground that section 10(1)(a) does not apply where the trustee is appointed under a will. According to the Tribunal, a trustee appointed under a will is not one appointed by a "written agreement" and therefore the benefit of section 10(1)(a) is not available to the petitioner. Section 10(1)(a) reads :

"In the case of agricultural income taxable under this Act, which the court of words, administrator-general or official trustee or any receiver, administrator, executor, trustee, guardian or manager appointed by or under any law or by an order of court or by written agreement, is entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from the court of wards, administrator-general, official trustee, or from such receiver, administrator,

executor, trustee, guardian or manager, as the case may be, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such agricultural income is receivable and all the provisions of this Act shall apply accordingly."

2. Though the expression used in the above section is "written agreement" what the legislature intended was a "written instrument". It speaks of an "executor " appointed by written agreement. Executors are appointed under wills and not by written agreements. If the section is literally construed, a part of the section with respect to "executors " will become otiose and that could never be the intention of the legislature. Section 10(1)(a) is in pari materia with section 41 of the Indian Income Tax Act. 1922. In section 41 of the expression used is "written instrument". To give effect to the intention of the legislature, we have to read the expression "by a written agreement" as "by a written instrument". The learned High Court Government Pleader also does not support the view taken by the Tribunal. He, however, contended that in the instant case the petitioner who is the trustee is entitled to receive the agricultural income partly on his own behalf and partly on behalf of his brothers and that the benefit of the section could be claimed only when the executor or trustee receive income wholly for the benefit of others. This contention has been raised for the first time before us on behalf of the department. The Tribunal has not referred to the terms of the will. It has to examine the terms of the will and then determine the question whether or not the benefit of section 10(1)(a) of the Act is available to the petitioner. We express to opinion on the contention raised by the learned High Court Government Pleader.

3. For the reasons stated above, we allow this petition, set aside the order of the Tribunal and remit the matter to the Tribunal for the disposal of the appeal afresh in the light of this order. Parties are directed to bear their own costs.