

(1962) 08 KL CK 0024
In the High Court Of Kerala
Case No : A.S. No. 62 of 1962

Chandran

APPELLANT

Vs

Krishnan Vaidyan

RESPONDENT

Date of Decision : 10-08-1962

Acts Referred:

Income Tax Act, 1922 — Section 23(5)
Kerala Agriculturists Debt Relief Act, 1958 — Section 2(a)

Citation : (1962) KLJ 1306

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : T.R. Achutha Warriar, for the Appellant; K.N. Narayana Pillai, for the Respondent

Final Decision : Dismissed

Judgement

T.K. Joseph, J.—This appeal arises from an order in execution. When the decree-holder took out execution, the second defendant, one of the judgment-debtors in the case, claimed that he was an agriculturist as defined in the Kerala Agriculturists Debt Relief Act, XXXI of 1958, and was entitled to the benefits conferred by the Act on agriculturists. This was overruled by the court below and he has preferred this appeal. The term "agriculturist" has been defined in section 2(a) and the definition excludes "any person assessed to income tax under the Indian income tax Act, 1922, in any two years within the three years immediately preceding the commencement of this Act". The appellant's case is that he was a partner of a registered firm and that the assessee was the firm and not himself. There is no force in this contention. The relevant provisions are contained in section 23(5) of the Indian income tax Act, 1922, which provides:

(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), section (3) or sub-section (4), as the case may be,—

(a) in the case of a registered firm,

- (i) the income tax payable by the firm itself shall be determined ; and
- (ii) the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined:

Provided that if such share of any partner is a loss it shall be set off against his other income carried forward and set off in accordance with the provisions of section 24 :

x x x x.

(The other provisos are irrelevant for the purposes of this case).

What is done is to compute the income of the firm and then to assess or compute the income of each partner which will include his share of the income of the firm. The appellant has no case that his income was not assessed in the relevant years in this manner or that he was not made liable to pay tax on such income. The decision of the Privy Council in *Seth Dadridas Daga & another v. Commr. of income tax* (1949 I. T. R. 209) does not afford any help to the appellant. The procedure has been explained in the decision as follows:

It will be convenient to begin with section 23 which deals with assessment. Some confusion arises from the fact that in the Act the words "assessment" and "assessee" are used in different places with different meanings. Section 2(2) defines "assessee" as "a person by whom income tax is payable", but the context in section 23 makes it clear that down at least to the middle of sub-section (5)(a) "assess" and "assessment" refer primarily to the computation of the amount of income and "assessee" means primarily a person the amount of whose income is being computed. The section requires the income tax Officer to do two things: first to compute or "assess" a person's total income, and then to determine the sum payable as tax. Sub-sections (1) to (4) set out alternative methods of computation or "assessment". In the normal case the person whose income is being computed is the person who pays the tax and for that case these sub-sections also provide for the income tax Officer taking the second step and determining the sum payable as tax. But the case of a firm is specially dealt with by sub-section (5). This sub-section only comes into operation after the total income of the firm has been computed or "assessed" under one of the earlier sub-sections. It draws distinction between registered and unregistered firms, In the case of a registered firm the firm does not itself pay income tax and therefore the sub-section directs that the sum payable by the firm shall not be determined, but that each partner's share of the firm's income shall be included in the assessment or computation of the total income of that partner. Thereupon the sum payable by that partner as tax is to be determined on the basis of that assessment which includes his share of the firm's income.

It follows that the decision of the court below is right and does not call for interference. The appeal fails and is dismissed with costs.