
(1968) 08 MAD CK 0027
In the Madras High Court

Commissioner of Income Tax

APPELLANT

Vs

K.S. Imam Saheb

RESPONDENT

Date of Decision : 21-08-1968

Acts Referred:

Income Tax Act, 1922 — Section 4(3)(viii)

Citation : (1969) ILR (Mad) 287 : (1970) 1 MLJ 291

Hon'ble Judges : K. Veeraswami, J

Bench : Division Bench

Judgement

K. Veeraswami, J.—This reference turns on the character of the income derived by the assessee in respect of the assessment years, 1958-59 and 1959-60. If it is agricultural income, it would be exempt from the charge u/s 4 (3) (viii) of the Income Tax Act, 1922. The Revenue as well as the Tribunal have all concurred in the view that the assessee will not be entitled to the exemption. At the instance of the Commissioner of Income Tax, therefore, this reference arises under a Section 66 (1) and the question is:

Whether, on the facts and in the circumstances of the case the two suras of Rs. 8, 962 and Rs. 8,833 are agricultural income, exempt u/s 4 (3) (viii)

2. The assessee at the relevant time was a dealer in coconuts. He also took leases, the transactions have been so described, of coconut thopes from different parties. Some of the transactions were registered and the others were not, but supported by acknowledgments by the lessors. There was a third category of transaction, evident from the entries in the account books. The assessee paid a fixed annual sum and was allowed to enjoy the fruits of the coconut trees for a stipulated period ranging from 1 to 3 years or even longer. Whether the term ran continuously is not clear from the record. In a few cases there was a stipulation that the lease did not include the land. At the end of the term the assessee should deliver possession of the trees to the lessors. The typical recital is:

As this sum....has been received by me in the manner mentioned above, you

shall pluck and take the yield of the coconut in the aforesaid thope, enjoy the same and deliver possession of the grove to meat the expiry of the lease....The ground land is not subject to the lease.

3. In the other cases, it is doubtful whether the land was included in or excluded from their scope.

4. The Tribunal's view that the income was agricultural income was based on the following reasoning. The right to cut the cocunuts extended over a long period, not merely a particular harvest; in view of this, the lessee must be taken to have the right to see that all future crops for the terms stipulated for accrued to him so that he could reimburse to him all the payments made to the lessor; whereas the purchase of a particular lot or of a standing crop would refer to a commodity in praesenti, the taking up on a lease for a long period committed the assessee "in futuro ; in the circumstances the lessee had a right and indeed it was in his interest to see that the land was properly kept, well watered, tilled, pruned and fenced so that his interests may be protected. The Tribunal also relied on *Govindaswami Vanniur v. Smt. S. Mahalakshmi Ammal* (1963) 21 M.L.J. 137 : (1963) 76 L.W. 378, as being in support of its view. It was alive to the fact that there must be some relationship between the produce sold and the land from which it was got as to entitle the assessee to claim it as produce from agriculture.

5. The claim for exemption has been rested on Section 2 (1) (a) which defines "agricultural income" so far as is relevant to this case. This provision says that, in the Act, unless there is anything repugnant in the subject or context, "agricultural income" means any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in the taxable territories or subject to a local rate assessed and collected by officers of Government as such. Having regard to this definition, an income to be agricultural income should satisfy that it is derived from land, and the land is used for agricultural purposes. To put it differently, there should be a nexus between income, land and agricultural operations, by which is meant something done to the land by human or mechanical agency to produce out of the land any crop, tree, plantation or other produce or product. The immediate source of the income must be land of the description or character mentioned in the definition. Do the facts in this case as to the character of the income satisfy the test? We are of opinion that they do not. It is obvious that (the test that) the land should be used for agricultural purposes is satisfied. The coconut trees grown on the land are agricultural produce, resulting from agricultural operations. If it is land which is used for agricultural purposes, the next enquiry has to be whether the income is derived from such land. It is here the difficulty for the assessee arises. The contention on his behalf is that a right to exploit or cut and remove coconuts from coconut trees is an interest in Immovable property because the term stipulated was over a period during which the coconut trees derived sustenance from the land, and, this being the case, it is a lease of the land itself with the coconut trees and the income derived in that sense is from the land used for

agricultural purposes. We are not convinced that the reasoning is correct. The very case cited for the assessee, *P. Venugopala Pillai Vs. V. Thirunavukkarasu and Others*, , brings out the distinction between a lease of land and lease of Immovable property for agricultural purposes. While land may be Immovable property the converse is not necessarily true. That was a case of an agreement of lease in respect of toddy yield from coconut trees, and the question the Court was called upon to decide was whether it was a lease or licence in the context of the requisite of a proper notice to quit u/s 106 of the Transfer of Property Act. The Officiating Chief Justice and Yahaya Ali, J., held that it was not a lease of land because they found on a plain reading of the document that the rights created thereunder were only (i) the right to enjoy the toddy yield from the trees and (ii) the right to enter upon the land for the said purpose. In their view, the transaction amounted to a licence so far as the land was concerned, a licence for the licensee to use it for the purpose of exercising the right to enjoy the toddy yield from the trees. Having said that, the learned Judges proceeded to hold, applying the principle of *Marshall v. Green* (1875) L.R. 1 C.P.D 35, that the transaction was in any case a lease of Immovable property used for agricultural purposes, and, therefore, a notice to quit was necessary u/s 106 of the Transfer of Property Act. Reference was made in that case to the definition of a "lease", "licence" and of "Immovable property" as defined by Section 3 (25) of the General Clauses Act.

6. In *Marshall v. Green* (1875) L.R. 1 C.P.D 35, the statement of the law which was quoted by the learned Judges is this:

The principle of these decisions appears to be this, that wherever at the time of the contract it is contemplated that the purchaser should derive a benefit from the further growth of the thing sold-from further vegetation and from the nutriment to be afforded by the land, the contract is to be considered as for an interest in land, but where, the process of vegetation is over, or the parties agree that the thing sold shall be immediately withdrawn from the land, the land is to be considered as a mere warehouse of the thing sold and the contract is for goods.

7. Applying this test, as was done in the case relied on by the assessee, his learned Counsel urges that if the transaction is regarded as a lease of Immovable property for agricultural purposes, inasmuch as thereby an interest in Immovable property is created, it should follow that the income is from land used for agricultural purposes. But, as we said, there is a distinction between an interest in Immovable property and an interest in land. Apart from that, the answer to the question under reference eventually would revolve round whether the income had been derived as agricultural income.

8. The Privy Council in AIR 1949 1 (Privy Council) explained the scope of the word "derived" in Section 2 (1) (a):

The word "derived" is not a *terra of art*. Its use in the definition indeed demands

an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered.

9. Now the genealogy is that there was here a land, that it was used for agricultural purposes, namely, raising of coconut trees, and leasing out, so to speak, of the right to cut and remove the usufruct therefrom. Can it be said that the source of the income of the assessee is the land? To our minds, it does not appear to be so. The immediate source is, as we are inclined to think, the coconut trees. Assuming that Counsel for the assessee is right in his contention that the transactions in his favour amounted to a lease of an interest in Immovable property, it does not flow from it that the income for that reason is derived from the land on which the coconut trees stand. In order to constitute agricultural income there should be a clear nexus between such income, land and agricultural operations. In this case the last two are present but not the first. In our view the nexus between the income and the land is missing. The connection of the income is with the trees themselves without reference to the land or agricultural operations.

10. On that view, it would be unnecessary to refer in any detail to two of the cases cited for the Revenue. The first of them, *Yagappa Nadar v. Commissioner of Income Tax* (1927) 2 I.C. 470 : ILR (1927) Mad. 923 : 105 I.C. 489 : AIR 1927 Mad. 1038, a decision of a Full Bench of this Court, held that income derived from toddy was agricultural income within the meaning of Section 2 (1) of the Income Tax Act, but only when it was received by the actual cultivator, whether as owner or lessee of the land on which the trees grow. On the facts there, the Court made the observation:

No interest in the land has been transferred here and it would appear that what the petitioner has obtained is a mere licence to tap the trees and draw the juices. If that be so, the mere fact that he has to water the trees (and that is not proved to be the case] shows only that the watering is one of the conditions of his license and not an act whereby the agricultural produce has been raised for that was raised before he obtained his license.

11. The actual decision, therefore, in that case was that the income was not agricultural in character. That, if we may say so with respect, supports the view we have taken of the facts in the instant case.

12. The Commissioner of Income Tax Vs. *Maddi Venkatasubbayya and Vellanki Venkataratnam*, , relied on for the Revenue may, however, not be quite apposite. For, in that case, as rightly sought to be distinguished for the assessee, the right which was the subject-matter of the agreement related only to cut and remove tobacco which was ripe for harvest and which was cultivated by another, and the transaction did not spread over a period. That means that the interest created by the agreement would not even amount to an interest in immovable property.

13. We answer the question under reference in favour of the Revenue with costs. Counsel's fee Rs. 250.