

(1996) 05 PAT CK 0032

In the Patna High Court

Case No : Tax Case Nos. 135, 136, 137, 138, 139, 140 and 141 of 1984

Commissioner of Wealth Tax

APPELLANT

Vs

Nathmal Jalan

RESPONDENT

Date of Decision : 16-05-1996

Acts Referred:

Citation : (1996) 05 PAT CK 0032

Judgement

1. The assessee purchased 0.19 acre land corresponding to 6 kathas according to local measurement units some time in 1970. The land contained 12 mango trees. He included the value of the said land in the returns of net wealth filed for the assessment years 1970-71 to 1976-77. As, however, the land contained mango trees, he claimed exemption from assessment in terms of Section 5(1)(iva) of the Wealth-tax Act, 1957, on the ground that it was agricultural land. The Wealth-tax Officer got enquiry made by the Income Tax Inspector and concluded on the basis of his report that the same was not agricultural in nature. He, therefore, declined to exclude the value of the land from the net assets. The assessee preferred appeal before the Appellate Assistant Commissioner who too did not accept his case. On further appeal to the Income Tax Appellate Tribunal, the learned Members of the Tribunal differed in their views. The Vice President of the Tribunal on reference agreed with the views of the Accountant Member to the effect that the land in question was agricultural in nature and, therefore, liable for exemption u/s 5(1)(iva) of the Act.

2. In the above backdrop the following questions of law at the instance of the Revenue have been referred to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the majority view of the Tribunal is justified in law in holding that the exemption u/s 5(1)(iva) of the Wealth-tax Act, 1957, was allowable to the land in question ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal by majority view was justified in holding that the land was agricultural for the purpose of the Wealth-tax Act and whether it has committed error of record and

of law in arriving at their decision ?"

3. Mr. L.N. Rastogi, learned counsel for the Revenue, has contended in support of the reference that having regard to the situation of the land and in the absence of any evidence that the land was being systematically used in connection with any agricultural activity, the Tribunal was not justified in holding the same to be agricultural in nature. He contended that mere existence of the mango trees on the land cannot be sufficient to characterise the same as agricultural land. Mr. N.K. Agrawal, counsel for the assessee, on the other hand, contended that the question as to whether the land is agricultural or not is basically a question of fact and the Tribunal having reached a particular conclusion this court should decline to enter into the merits and record a different conclusion.

4. Mr. Rastogi in reply submitted in this connection that the finding as to the character of the land may be called, in the ordinary course, a finding of fact but where such finding is arrived at on wrong premises or on consideration of irrelevant or insufficient facts it becomes a mixed question of law and fact amenable to the advisory jurisdiction of this court.

5. Section 3 of the Wealth-tax Act, which is the charging section, lays down that subject to the provisions of the Act there shall be charged for every assessment year a tax in respect of the net wealth of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. The term "net wealth" has been defined to mean the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under the Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date. Certain exceptions are provided in the Act and one of the exceptions is as contained in Clause (iva) of Section 5(1) of the Act.

6. There cannot be any doubt, in the circumstances, that the onus to prove that a particular item of assets qualified for such exemption is on the person who claims it, that is, the assessee. In the instant case except the two revenue receipts showing that the revenue was paid in respect of land in question, which were filed at the stage of hearing before the Tribunal, no other evidence was produced on behalf of the assessee. But so far as the revenue receipts are concerned, they do not show the character of the land. It is not in dispute that the land revenue is payable even in respect of the non-agricultural land situate in municipal area. In *Syed Rafiqur Rahman Vs. Commissioner of Wealth Tax*, , which is a decision of this court, the land in question was recorded as orchard in the survey record of right. The certificate granted by the ultimate purchaser of the land also showed that at the stage of negotiation for sale trees stood on the land. The spot inspection made by the Wealth-tax Officer also more or less corroborated the same. In spite of all these, this court did not accept the contention of the assessee. It took into account the fact that the land was situate in the heart of the town of Patna and also that there was no evidence showing

any on-going activity connected with agriculture on the land.

7. In *Raja Mustafa Ali Khan v. CIT* [1948] 16 ITR 530, the Privy Council observed that although it may always be difficult to draw a line of demarcation between agricultural and non-agricultural land, yet unless there is some measure of cultivation on the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes within the meaning of the Act. It also held that income from the sale of forest trees growing on land naturally or without the intervention of human agency, even if the land is assessed to land revenue, is not agricultural income within the meaning of Section 2(1)(a) of the Income Tax Act. According to the Privy Council, unless there is some evidence of some measure of on-going cultivation on the land it cannot be said to be agricultural land.

8. In *Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy*, , after a survey of the decisions of the different High Courts on the point, the Supreme Court observed that the word "agriculture" in its primary sense denotes cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar other operations on the land. These are basic operations which are required to be carried on on the land and only when agricultural operations, termed as "integrated activity" by their Lordships, take place can the same constitute agricultural in nature and the land can be said to be used for agricultural purposes.

9. In the present case, the land is situate not only within the municipal area but just by the side of the Patliputra Industrial Estate. It would be useful to quote the relevant portion of the report of the Income Tax Inspector in this regard :

" As directed, I visited the orchard of the aboyenamed person. The plot is just on the western and northern side of Patliputra Industrial Estate and is surrounded with the compound wall. The orchard is within the Municipal Corporation and residential houses are fast approaching from the northern side. There are few old trees on it. Further the land is not assessed to land revenue. In the circumstances, this orchard could not be termed as agricultural land."

10. One can take notice of the fact that a major portion of the Digha area, where the land in question is situate, was at one point of time dotted with good quality mango trees. In course of time a large number of the trees were cut away and in their place residential houses have come up. The assessee purchased the land, which measures only 0.19 acre, in 1970. The submission of counsel for the Revenue that the purchase of a small parcel of land at a time when the area was fast developing into residential/commercial area is a circumstance to show that the dominant purpose of the purchase cannot be lightly ignored. From the report of the Income Tax Inspector it appears that the land is not only situate by the side of Patliputra Industrial Estate but is also enclosed by boundary walls. It is true that certain mango trees stood on the land but there cannot be any dispute

that the trees were standing from before. In other words, the trees were not planted by the assessee. There is no evidence to suggest that the assessee was carrying on any kind of activity connected with rearing of trees like ploughing, manuring, watering and so on. In such a situation, mere maintenance of trees cannot be said to be sufficient to hold that the land was used for agricultural purposes. We are conscious of the fact that the activities as may be required to maintain an orchard will be different from the kind of activities which are required to be undertaken in connection with cultivation of paddy, wheat, etc. But there is nothing to suggest that even the minimum activity which is required to be undertaken by the farmer for rearing mango trees were undertaken by the assessee. As stated above, the only evidence which he produced in support of his case was two land revenue receipts, which he had obviously obtained during the pendency of the appeal before the Tribunal because as reported by the Income Tax Inspector the land was not assessed to land revenue at the time of inspection by him. And even if it were so that would hardly make any difference. The receipts do not show the nature of the land, they merely show that land revenue is being paid to the State by the person concerned, i. e., the assessee.

11. To conclude, apart from the existence of mango trees there is no other evidence to suggest the character of the land as being agricultural and, therefore, it would not be wild to say that it is a case of no evidence. That being the position it must be held that the assessee has failed to discharge the onus and, therefore, the majority view taken by the Tribunal cannot be said to be correct either in law or on facts. Consequently, for the reasons stated above, we answer the questions in the negative, that is, in favour of the Revenue and against the assessee but make no order as to costs.

12. Let a copy of this order be sent to the Income Tax Appellate Tribunal, Patna Bench, Patna.