

(1969) 11 KL CK 0009

In the High Court Of Kerala

Case No : Original Petition No's. 268 and 375 of 1968

C.P.A. Yoosuf

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 17-11-1969

Acts Referred:

Income Tax Act, 1961 — Section 2(1)

Citation : (1970) 77 ITR 237

Hon'ble Judges : M.U. Issac, J

Bench : Single Bench

Advocate : K. Velayudhan Nair, V.S. Moothathu, N.R.K. Nair, K.J. Joseph and T.K.M. Unnithan, for the Appellant; P.K. Krishnankutty Menon and Government Pleader, for the Respondent

Judgement

M.U. Isaac, J.—The parties are the same in both these writ petitions. The petitioner is an assessee to Income Tax as well as agricultural Income Tax. He used to purchase from planters as per written agreements old rubber trees, which had to be cut and removed for the purpose of replantation. The document marked exhibit P-1 in O.P. 268 of 1968 is an agreement dated March 6, 1963 ; and it is stated that all agreements executed by him in this respect are the same as exhibit P-I. Ordinarily, these agreements provide a period of two years for cutting and removing trees. The petitioner used to slaughter-tap the trees during that period; and thus he got on account of these transactions an income by sale of the rubber trees and also an income by sale of rubber obtained by slaughter-tapping. In making his returns for assessments of Income Tax and agricultural Income Tax, the petitioner included the income by sale of rubber obtained by slaughter-tapping in the agricultural Income Tax returns, while the income from sale of rubber trees was included in the Income Tax returns. For the years 1961-62 to 1966-67 (both inclusive), the second respondent, the Agricultural Income Tax Officer, Kottayam, treated the income from rubber by slaughter-tapping as part of the total agricultural income of the petitioner, and it was assessed accordingly. This was how the petitioner treated it; and he also paid

agricultural Income Tax on the said income. But the first respondent, the Income Tax Officer, A-Ward, Kottayam, did not accept the above position. He claimed that the above income was not agricultural income, and assessed the petitioner for the same assessment years by treating it as part of his total non-agricultural income. Thus the petitioner's income from rubber obtained by slaughter-tapping has been assessed both as agricultural income and non-agricultural income. This original petition has been filed to quash the assessments made by the first respondent, in so far as he treated the above income as non-agricultural income, and, in the alternative, to direct the second respondent to refund the tax collected by him from the petitioner in respect of the said income, if it is found to be non-agricultural income.

2. The learned counsel for the Central Income Tax department submitted that the Board of Revenue of the State has conceded the position taken up by the first respondent. This was not disputed by the learned Government Pleader, appearing for the second respondent. The petitioner's learned counsel, however, contended that the above income is agricultural income. According to him, the agreement, exhibit P-1, is a lease of the land for the period mentioned therein, the slaughter-tapping was done as a lessee, and the income obtained in that manner is agricultural income. Exhibit P-1 would not lend any support for this contention. It is in express terms a contract of the sale of the old rubber trees. The parties describe themselves as vendor and purchaser ; and the agreement clearly states that the trees standing in the land described therein are sold to the petitioner for the price fixed between the parties. The petitioner has been given two years' time to cut and remove the trees. As the learned counsel submitted, there must have been an understanding between the parties that the petitioner would be allowed slaughter-tapping of the trees during the time, within which he is to cut and remove the trees, and clear the land for replantation, and the income derivable by that process must have also been taken into consideration in fixing the price of the trees. At the same time it is clear from exhibit P-1 that it does not create any lease or other interest in the land in favour of the petitioner. The only question is whether the income thus derived by the petitioner is agricultural income or non-agricultural income. It is not disputed that, if it is not agricultural income, it would be assessable to the Central Income Tax. Section 2(1) of the Income Tax Act, 1961, defines agricultural income as follows : "'Agricultural income" means-

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such ;

(b) any income derived from such land by-

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the

produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of Sub-clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other outbuilding."

3. The definition of agricultural income in the 1922 Act is the same. All income derived from land is not agricultural income. Only income derived from such lands and buildings as are mentioned in the above definition, and derived in any of the methods stated therein, alone would be agricultural income. The income derived by a person by sale of rubber obtained by slaughter-tapping trees, which he has purchased for being cut and removed is not income derived in any such manner; and it does not, therefore, fall within the definition of "agricultural income".

4. The learned counsel for the petitioner, however, contended that, though the petitioner had not to do any agricultural operations as such for the slaughter-tapping, he has been using a chemical compound for stimulating the trees and getting the maximum yield out of them. According to the learned counsel, this is an agricultural operation for deriving income. I am unable to agree. The petitioner has no interest, whatsoever, in the land from which the income is derived ; and, as already stated, the income is not derived by any of the methods mentioned in Section 2(1) of the Income Tax Act, 1961. On the other hand, the income is derived under contracts of sale entered into between the petitioner and other planters. Such an income is clearly non-agricultural.

5. The next question for consideration is whether the petitioner is entitled to get refund from the second respondent of the tax collected by him in respect of the above income by including it as part of the petitioner's total agricultural income. The, learned Government Pleader submitted that the assessments were made on the basis of voluntary returns made by the petitioner, that he has not sought to quash the said assessments, and that so long as the assessments stand, he was not entitled to get the refunds claimed. This contention cannot be accepted. It was the duty of the second respondent to consider and determine whether the income from slaughter-tapping of rubber included in the return of the assessee was agricultural income or not. He has got jurisdiction only to assess agricultural income. This income happened to be included as agricultural income by the

second respondent, either because he did not apply his mind to that matter, or because he was ignorant about it. It cannot be said that he knew that it was not agricultural income, and he still assessed it. It would be then a dishonest exercise of jurisdiction. At any rate, when he knew or he was informed that this was not agricultural income, or when he is convinced that it was not assessable, it is his duty to rectify the error and refund to the petitioner the amount of tax which he collected wrongly and without jurisdiction. It is, therefore, strange that the claim for refund of the amount thus collected is now opposed on behalf of the second respondent. This is apparently a case where both parties acted under a mistake, and the second respondent is bound to refund to the petitioner the amount collected by him under mistake and without jurisdiction.

6. In the result, I hold that the income obtained by the petitioner by slaughter-tapping of rubber trees purchased by him from planters is non-agricultural income and that the assessment of that income under the Indian Income Tax Act by the first respondent was legal and proper. I also direct the second respondent to recompute the agricultural Income Tax payable by the petitioner for the assessment years 1961-62 to 1966-67 (both inclusive) after excluding the income from the aforesaid source from the total agricultural income of the petitioner, and refund to him within three months from this date the excess amounts of tax collected from the petitioner. In the circumstances of the case, the parties will bear their own costs.