(1971) 06 KAR CK 0013

In the Karnataka High Court

Case No : Civil Revision Petition No''s. 1329 and 1330 of 1970

C.T. Rajagopal APPELLANT

Vs

State of Mysore RESPONDENT

Date of Decision : 22-06-1971

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 18 (2), 36, 55

Citation : (1972) 86 ITR 814

Hon'ble Judges : Mohammad Sharif, J;G.K. Govind Bhat, J

Bench : Division Bench

Advocate : K. Sarangan, for the Appellant; R.S. Mahendra, for the Respondent

Judgement

Govinda Bhat, J.—These are two revision petitions preferred by a common assessee u/s 55 of the Mysore Agricultural Income Tax Act, 1957, hereinafter called "the Act", and they relate to the assessment years 1965-66 and 1966-67. The petitioner, hereinafter referred to as "the assessee", grows areca nuts which is a commercial crop liable to be assessed under the Act. For the assessment years 1965-66 and 1966-67 he filed returns u/s 18(2) of the Act declaring the area of his land under arecanut cultivation as 4.27 acres in Bhimasamudra and Bettada Nagenahalli villages of Tumkur District. The said returns were accepted and the assessee was held not liable to tax by the orders of the Agricultural Income Tax Officer, Tumkur.

2. On April 22, 1966, the said Agricultural Income Tax Officer issued two notices in identical terms purporting to be notices u/s 36 of the Act for re-opening the assessments. It is sufficient if we set out the terms of one notice which reads thus :

"No. CT 37/65-66 Office of the Agrl. Income Tax Officer, 5/68-69 Tumkur Circle, Tumkur Dt. 22-4-68. NOTICE u/s 36 OF THE M.A.I.T. ACT, 57 FOR THE ASST. YEARS 1965-66 & 1966-1967 Please take notice that you have declared 4 acre 27 guntas of areca in the return furnished. The same has been considered while concluding the assessment for the assessment year 1965-66 and in treating the case as below the extent required under the provision of the Act.

As per the observation made by the Commissioner (A.I.T.) and also as seen from the assessment records of the years 1960-61 and 1957-58, you have raised areca in 5 acres 23 guntas. Since areca is a perennial crop there is no reason for the reduction in extent. Thus, you have not declared the full extent of commercial crop raised. Therefore, it is proposed to take action u/s 36 by adopting the total extent of areca raised at 5.23.

In the absence of accounts produced, the income is proposed to be determined as under.

CROP YEAR 1965-66 1966-67 Areca. Yield per acre 35 maunds 35 maunds Rate per maund 67 per maund 87 per maund Cost of cultivation per acre Rs. 400 Rs. 500 Any other claims for exemption will be considered as per rules on the production of vouchers.

File your objections if any on or before May 8, 1968, at this office, Tumkur, failing which the proposal made above will be confirmed. Adjournments will not be given under any circumstances.

Sd. Agricultural Income Tax Officer, Tumkur Circle, Tumkur.

To Sri C. T. Rajagopal s/o. C. Thimmappa Landlord, Playa Village, Bheemasamudra, Chitradurga Taluk."

3. It is relevant to state at this stage that under the said notices the assessee was not called upon to file his returns for the assessment years 1965-66 and 1966-67. He filed his objections as directed and in the said objections he contended that the area of his land under arecanut cultivation is less than 5 acres. The assessing authority rejected the said contention and held that the total area of the land under arecanut cultivation is 5 acres and 23 guntas. On that basis he reassessed the income of the assessee. Appeals preferred by the assessee to the Deputy Commissioner were unsuccessful. The Tribunal also dismissed the appeals with slight modifications regarding the area and consequently the income.

4. In these revision, petitions, Sri Sarangan, learned counsel for the assessee, submitted that the entire proceedings for reassessment initiated under the notices aforesaid are illegal and without jurisdiction and consequently the reassessment orders are liable to be set aside. In our opinion, the contention of the learned counsel is well-founded. Section 36 of the Act which provides for assessment or reassessment of income which has escaped assessment reads thus :

"36. Income escaping assessment. - (1) If for any reason any agricultural income chargeable to tax under this Act has escaping assessment in any financial year or has been assessed at too low a rate, the Agricultural Income Tax may, in cases falling under sub-section (3) of section 40, at any time within five years and in any other case at any time within three years, of the end of that year serve on the person liable to pay the tax or in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 18 and may proceed to assess or reassess such income and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section......" (Provisos omitted as unnecessary)

5. Section 36 requires the Agricultural Income Tax Officer to serve a notice on the assessee containing all or any of the requirements which may be included in a notice under sub-section (2) of section 18 and then he may proceed to assess or reassess such income as escaped assessment. Section 18(2) provides for the issue of a notice requiring the assessee to furnish a return within such period not being less than 30 days as may be specified in the notice of his total agricultural income during the previous year. In the instant cases, the notices dated April 22, 1968, did not call upon the assessee to furnish the returns for the assessment years 1965-66 and 1966-67. All that the assessee was asked was to file his objections to the proposed reassessment.

6. The issue of a notice u/s 36 is a condition precedent to the validity of the assessment on agricultural income which has escaped assessment or has been under-assessed in the assessment year, and if no such notice is issued or if the notice issued is invalid, the assessment is bad in law. As we have observed earlier, there were no notices issued to the assessee requiring him to furnish the returns u/s 36 read with section 18(2) of the Act which is the condition precedent for initiating proceedings u/s 36. Therefore, the entire reassessment proceedings ending with the assessments under revision are illegal and without jurisdiction.

7. In the result, for the reasons stated above, these revision petitions are allowed and the reassessment orders made on the petitioner for the assessment years 1965-66 and 1966-67 are hereby set aside. The petitioner is entitled to his costs.

8. Advocate''s fee Rs. 100 one set.

