(1993) 02 KL CK 0046

In the High Court Of Kerala

Case No : T.R.C. No''s. 140 and 141 of 1991 and 11, 12, 13, 14, 15 and 16 of 1993

Dr. George Peter — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 18-02-1993

Acts Referred:
Kerala Agricultural Income Tax Act, 1950 — Section 34, 35, 36

Citation : (1993) 111 CTR 152 : (1994) 205 ITR 79

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : C.N. Ramachandran Nair, for the Appellant; V.C. James, for the Respondent

Judgement

K.S. Paripoornan, J.—This batch of eight revisions are connected cases. Identical questions arise for consideration in all of them. T. R. C. No. 140 of 1991, T. R. C. Nos. 11, 14 and 15 of 1993 are filed by one, Dr. George Peter. T. R. C. Nos. 141 of 1991, 12, 13 and 16 of 1993, are filed by one, Shri George Oommen. Dr. George Peter and Shri George Oommen are brothers. They are partners of a registered firm, namely, Good Hope Plantations. The firm originally owned two rubber estates, viz., the New Good Hope Estate and the New Hope Estate. On August 1, 1979, the New Good Hope Estate was partitioned between the two brothers and the firm Good Hope Plantations continued with the New Hope Estate. A settlement deed was brought into existence by Shri George Oommen by which a trust was created. The scope of the trust and other matters connected therewith are in controversy.

2. For the purpose of this batch of eight revisions, it is sufficient to notice the following facts :

In this batch of eight revisions, the common order passed by the Deputy Commissioner, Agricultural Income Tax and Sales tax, Alappuzha, dated March 30, 1991, is assailed. The assessments for the years 1981-82, 1982-83, 1983-84 and 1984-85 were revised in suo motu revisional proceedings by the Deputy Commissioner, by proceedings dated March 30, 1991. The original assessment orders against both the brothers/assessees for the year 1981-82 was passed on December 9, 1982, for the year 1982-83 on February 26, 1983, for the year 1983-84 on June 11, 1984, and for the year 1984-85 on March 7, 1985. Notice to revise the above assessments in suo motu proceedings was issued by the Deputy Commissioner on February 14, 1991, and the common revisional order was passed on March 30, 1991. One of the grounds taken objecting to the initiation of the suo motu revisional proceedings was that the proceedings were not initiated within a reasonable time. The revision proceedings were initiated more than six years after the order of assessment for the year 1984-85 and nearly 7 or 8 years for the other assessment years. It was pleaded that the proceedings are barred. The Deputy Commissioner of Agricultural Income Tax and Sales tax repelled the plea that there was inordinate delay in initiating revisional proceedings. He further held that there is no limitation for initiation of proceedings in view of the decision in Ishare Bhat v. Commr. of Agrl. I. T. [1967] KLT 1073. In other words, the plea that the revisional proceedings were not initiated within a reasonable time was repelled. On the merits, the revisional authority held that the matter requires further evaluation and cancelled the assessments on the two brothers for the years 1981-82 to 1984-85 and ordered a remit to the assessing authority for de novo consideration. The two assessees have filed eight revisions against the common order passed in suo motu revisional proceedings dated March 30, 1991.

3. We heard counsel.

4. As many as five questions have been formulated as questions of law for consideration by this court. One of the fundamental or vital questions raised is that the initiation of the revisional proceedings u/s 34 of the Act is not within reasonable time and so are barred. It is common ground that, if proceedings u/s 35 of the Act are initiated, it should have been done at the latest on or before March 31, 1990, that is the last day even for the year 1984-85. For the earlier years, the proceedings u/s 35 of the Act should have been initiated even earlier. Similarly, if proceedings u/s 36 of the Act are initiated, the latest day therefore would have been August 7, 1988, for the year 1984-85. For the earlier years, it should have been even earlier. But, in this case, even the notice to revise the assessments was sent only on February 14, 1991, long after the periods by which the assessments for the years 1981-82 to 1984-85 could have been reopened either u/s 35 of the Act or rectified u/s 36 of the Act.

5. In Nelliampathy Tea and Produce Co. Ltd. Vs. Commissioner of Agricultural Income Tax, , at page 234, a Bench of this court held that the normal period within which an assessment once made can be revised in suo motu revisional proceedings u/s 34 of the Act should not exceed the period fixed u/s 35 or 36 of the Act. Beyond the period contemplated by Section 35 or 36 of the Act, an assessment which has become final, can be revised u/s 34 of the Act only on

cogent and sufficient reasons and it should be so demonstrated by the Revenue. At page 234 of the report, the court has held as follows :

".... The normal period within which an assessment, once made, can be reopened u/s 35 of the Act, is five years from the end of the assessment year. u/s 36, a mistake could be rectified within three years from the date of the assessment order. Once a final assessment is rendered (after the appeal or revision or reference, as the case may be), the finality attached to the order can be put in peril and the assessment can be reopened normally only in proceedings u/s 35 or 36 of the Act. To reopen the final assessment after the said periods, in exercise of the powers u/s 34 of the Act, demands cogent and sufficient reasons. The power vested in the Commissioner of Agricultural Income Tax should be exercised bona fide and within a reasonable period. The Revenue should be able to demonstrate that there were circumstances beyond control or other supervening events or insurmountable difficulties for not setting in motion the proceedings u/s 34 of the Act within the normal period provided in Sections 35 and 36 of the Act. Whether there were exceptional or extenuating circumstances, explaining the reason for not setting in motion the proceedings u/s 34 of the Act within the normal period, to revise or reopen an assessment which will affect the assessee adversely, would depend upon the facts and circumstances of each case. It should be remembered that the statutory power conferred for public purposes is conferred, as it were, upon trust, not absolutely, and it can validly be used only in the right and proper way, which the Legislature, when conferring it, is presumed to have intended. In a system based on the rule of law, there is no unfettered or untrammelled discretion in any statutory or public authority."

6. Tested by the above touchstone, the revisional proceedings for the four years, in the case of the two brothers, were not initiated within a reasonable time. It is true that the question as to whether there were cogent reasons or other difficulties which prevented the Revenue from initiating the revisional proceedings within the time contemplated by Section 35 or Section 36 of the Act is a question of fact. The revisional authority has repelled the plea that there is inordinate delay in setting in motion suo motu revisional proceedings. The long lapse of years itself has been adverted to in the common revisional order. When we ques tioned counsel for the Revenue as to whether there is any reason or other circumstances which deterred the Revenue from initiating the revisional proceedings within the time contemplated by Section 35 or Section 36 of the Act, counsel for the Revenue submitted that there is nothing on record to show that there were any supervening events or circumstances beyond control for not setting in motion the proceedings u/s 34 of the Act within the normal period provided in sections 35 and 36 of the Act. So, a remit, for that purpose, is not required.

7. In the above circumstances and in view of the Bench decision of this court in Nelliampathy Tea and Produce Co. Ltd. Vs. Commissioner of Agricultural Income Tax, , we are of the view that suo motu revisional proceedings for the four years

1981-82 to 1984-85 against the two brothers are vitiated due to inordinate delay. The revisional proceedings are unreasonable or irrational. On this short ground, the common suo motu revisional proceedings dated March 30, 1991, is set aside. The above tax revision cases are allowed to the above extent.

