(1947) 02 AHC CK 0009

In the Allahabad High Court

Durga Narain Singh APPELLANT

Vs

Commr. of Income Tax RESPONDENT

Date of Decision : 21-02-1947

Acts Referred:

Citation : AIR 1948 All 10 : (1947) 17 AWR 303

Hon'ble Judges : Malik, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Malik, J.—This is a reference u/s 66(1), Income Tax Act (11[XI] of 1922) by the Income, tax Appellate Tribunal.

2. Raja Bahadur Major Raja Durga Narain Singh of Tirwa owned considerable property in the district of Farrukhabad. During the assessment for the year 1941-42 the Income Tax Officer included the income derived from toddy, sale of grass, sale of moonj and patawar, fisheries, sale of jungle trees and sale of mangoes as income which was assessable to Income Tax. An objection was raised on behalf of the assessee that the income from the sources mentioned above was agricultural income and. the Income Tax Officer was, therefore, not entitled to include the amount in the assessable income of the assessee. The Income Tax Officer had also included interest from the arrears of rent received by the assessee as taxable income.

3. The assessee appealed to the appellate Assistant Commissioner of Income tax who, however, upheld the decision of the Income Tax Officer.

4. On further appeal to the Income Tax Appellate Tribunal, the Tribunal held that the interest payable on arrears of rent was agricultural, income and should not, therefore, have been included in the taxable income of the assessee, being exempt u/s 4(3)(viii), Income Tax Act. As regards the income from the other sources mentioned above, the Tribunal was of the opinion that as the income was from trees and grass etc., of spontaneous growth, it did not come under the

definition of the words ''agricultural income'' u/s 2(1)(a). Income Tax Act.

5. Both the assessee as well as the Commissioner of Income Tax were dissatisfied with this order. The assessee made an application that a reference should be made to this Court u/s 66(1) of the Act for decision of the question whether the income from the sources mentioned by us above was agricultural income. The. Income Tax Commissioner also made an application that the question should be referred to this Court whether the. interest due on arrears of rent was agricultural income.

6. Both these applications were granted by the Appellate Income Tax Tribunal, and the following two questions have been referred to this Court. The first question is:

(1) Whether, in the circumstances of the case, the income from fisheries and from sale of toddy, grass, moonj and patawar, forest trees and mangoes in a grove or otherwise is ''agricultural income'' within the meaning of Section 2(1)(a) Income Tax Act, and as such exempt from Income Tax u/s 4(3)(viii) of the Act?

7. In the statement of the case it is mentioned that the trees and grass, etc., were of spontaneous growth, though the land on which they had grown was assessed to land revenue. The second question is:

(2) Whether, in the circumstances of the case, the sum of Rs. 1,069/- realised by the assessee on account of interest on arrears of rent of land which is used for agricultural purposes and is assessed to land revenue is ''agricultural income'' within the meaning of Section 2(1)(a), Income Tax Act, and as such exempt from tax u/s 4(3)(viii) of the said Act.

8. Mr. Gopi Nath Kunzru, learned Counsel for the assessee, has urged that the answer to, the first question must be in his favour, even though the trees and grass, etc., which had yielded the income, were of spontaneous growth, as the land was assessed to land revenue and the result of including it within the taxable income of the assessee would mean double taxation. He has urged that the ''words ''agricultural purposes'' have not been defined and they are wide enough to include not only growing of crops but also income from trees or other sources which may be reasonably included within the term ''husbandry''.

9. The words ''agricultural income'' have been defined in Section 2(1)(a) as meaning:

Any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such.

The mere fact that the mahal in which the land is situate is assessed to land revenue is not enough to entitle the assessee to claim exemption. He must further show that the rent or revenue is "derived from land which is used for agricultural purposes". It is not disputed, that this kind of income may be included in the term ''revenue''. The question is whether it is "derived from land which is used for agricultural purposes." On this point a Bench of this Court has held in BENOY RATAN BANERJI Vs. COMMISSIONER OF Income Tax, U. P. C. P. AND BERAR., that the income from trees of spontaneous growth, to the production of which the assessee has made no contribution by way of cultivation, is not income from land used for agricultural purposes. As has been observed by Harries, C.J. in PROVINCE OF BIHAR Vs. MAHARAJA PRATAP UDAI NATH SAHI DEO OF RATUGARH AND ANOTHER., these trees:

have grown naturally in the jungles without the intervention of human agency, and the growth of these trees cannot be said to result from the cultivation of the soil. In fact, it was the absence of cultivation that permitted the area to develop into a jungle."

If we may say so with respect, we entirely agree with'' the above decision and we must, therefore, answer this question in the negative.

10. The next question is also covered by a recent decision of this Court in MST. SARJU BAI Vs. COMMISSIONER OF Income Tax., . A Bench of this Court considered the question whether interest on arrears of rent of agricultural land realised by an assessee u/s 146, United Provinces Tenancy Act, was ''agricultural income'' within the meaning of Section 2(1)(a) Income Tax Act, and it came to the conclusion that it was so. The reason given by the Bench, with which we are in entire agreement, is that interest can be classified as coming within the larger expression ''revenue'' and as it is made a statutory attribute of arrears of rent it must beheld as agricultural income. As was pointed out in that case, if there had been no tenancy, there would have been no arrears of rent and if there had; been no arrears of rent, there would have been no statutory interest, and following the sequence of causes it was held that it was revenue derived from land. It is not necessary for us to discuss this matter at any length in view of the Bench decision of this Court mentioned above. We" therefore, answer this question in the affirmative.

11. We direct that the parties shall bear their own costs of this reference. We assess the fee of the counsel for the Department at Rs. 200/-. Six weeks'' time is given to him to file the fee certificate.

12. A copy of this judgment shall be sent to the Income Tax Appellate Tribunal under the seal of the Court and the signature of the Registrar.

