

(1961) 12 KL CK 0008
In the High Court Of Kerala
Case No : O. P. No. 3 of 1961

EECHUKUTTY MENON

APPELLANT

Vs

AGRICULTURAL Income Tax, OFFICER.

RESPONDENT

Date of Decision : 14-12-1961

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 56, 57

Citation : (1963) 47 ITR 589 : (1962) 1 KLJ 532

Judgement

In this writ petition the question that arises for decision is as to whether the petitioner-tarwad is liable for payment of super-tax under the provisions of the Agricultural Income Tax Act, 1950 (XXII of 1950).

According to Mr. V. K. Krishna Menon, learned counsel for the tarwad liable for payment for super-tax is illegal and void.

In order to appreciate the contentions that have been raised by Mr. V. K. K. Menon, learned counsel for the petitioner and the learned government pleaders appearing for the respondent, it is necessary to set out the circumstances under which this write petition has been filed.

There is no controversy that the petitioner is an undivided Marumakkathayam tarwad; and for the 1960-61 there was a pre-assessment notice issued by the Agricultural Income Tax Officer, Chittur. It is not necessary for me to go into the various other matters mentioned therein because in this writ petition the attack relates exclusively only to that part of the final assessment order, exhibit P-3, levying super-tax as against the petitioner. Therefore, I express no views whatever regarding the various other matters mentioned either in the pre-assessment notice or the objections filed by the petitioner or even in the final order of assessment exhibit P-3.

So far as the particular point is concerned, it will be seen that even in the pre-assessment notice, exhibit P-1, the officer has stated that this is undivided Marumakkathayam tarwad consisting of seventeen members and the income due

to five members is Rs. 14,885. On this basis, the officer works out the rate applicable for the charge of agricultural Income Tax u/s 3(3) of the Act at Rs. 10.77. After calculating the agricultural Income Tax and surcharge payable in this manner, the assessing office states that super-tax is payable since the total income of tarwad exceeds Rs. 25,000. At this stage, I may mention that the total agricultural net income of this towards has been fixed in the sum oil Rs. 50,606.00 in the earlier part of the notice.

The assessing officer, after stating that the super-tax is payable since the total income exceeds Rs. 25,000, further states that the concessional rate on the share income due to five members applicable only for the purposes of agricultural Income Tax. Then the officer works out the super-tax and accordingly fixes the amount of super-tax and surcharge as payable by the petitioner in the sum of Rs. 3,671.81. this is totaled up with the agricultural Income Tax already levied. There is a requirement in exhibit P-1 that objections to the proposals are to be made on or before November 28, 1960.

The Petitioner appears to have filed a fairly lengthy objection evidenced by exhibit P-2. Here again, as I mentioned earlier, the only relevant aspect to be considered is when he challenges the jurisdiction petition, because all those aspect to be considered is when he challenges the jurisdiction of the assessing officer to levy super-tax on this tarwad. It is not really necessary for me to mention the reason given in the laid objection petition, because all those aspects have been presented before me by my judgment. The only thing to be noted now in the objection petition is that the petitioner has challenged the jurisdiction of the assessing authority to levy super-tax on this tarwad.

In the final order of assessment, exhibit P-3, dated December 9, 1960, passed by the Agricultural Income Tax Officer, Chittur, after referring to the various matters and also dealing with the other points relating to the levy of agricultural Income Tax in dealing more specifically with the question of super-tax, the officer rears his original view was indicated in exhibit P-1 that, super-tax is payable since the total income of the person exceeds Rs. 25,000 and that the concessional rate on the share of income due to five members is applicable only for purposes of agricultural Income Tax levy. Here again, I may sites that the total net agricultural income of this towards has been fixed in the sum of Rs. 50,606.00. In view of the fact that this is an undivided Marumakkathayam tarwad consisting of seventeen members, the officer works out the share of five members in the sum of Rs. 14,885 and accordingly applies also the rate u/s 3(3) of the Act at Rs. 10.77. After calculating the Income Tax on this basis, according to him, in view of the fact that the total income exceeds Rs. 25,000, the office makes the petitioner liable in the sum of Rs. 3,671.81 by way of super-tax also.

It is this part of the order of the assessing officer and covered by exhibit P-3 that is attacked before me by Mr. V. K. K. Menon, learned Counsel for the petitioner. Once again I state, as specifically mentioned in the writ petition, that regarding all the other points, which are covered by exhibit P-3, the petitioner is seeking

the appropriate relief available to him under the statute itself. Therefore, I have no occasion to deal with this aspect nor do I express any opinion regarding other points dealt with by the assessing officer under exhibit P-3. According to Mr. V. K. K. Menon, learned counsel for the petitioner, a charge of super-tax is really covered by the provision contained in Chapter IX, namely, sections 56, 57 and 59 to show that the charge of super-tax is also to be considered to be controlled by the provisions of section 3(3) of the Act. According to the learned counsel, for the purposes of super-tax also, the net income in this case is to be Rs. 50,606.00; but in view of the application of section 3(3) of the Act, which according to him, controls also the levy of super-tax, the super-tax is to be assessed at the average rate applicable to the share of the agricultural income due to five members of the family or to Rs. 6,000 whichever is higher; and the contention is further pursued by urging that on this basis no super-tax will be payable at all, since as per partly of the Schedule to the Act, no super-tax is payable on the first Rs. 25,000 of the total agricultural income. Shortly the contention is that the charge, assessment, etc., of super-tax is subject to the provisions of section 3(3) of the Act, which has been enacted as a concession and in favour of families like tarwad, etc.

The learned counsel has referred me to some of the provisions of the statute in support of this contention.

On the other hand, the learned Government pleaders appearing for the State urged that section 3(3) does not at all come into the picture, in the matter of levy and assessment and collection of super-tax, even in respect of families, tarwads or other persons referred to in the sub-section, because those are all matters which are specifically dealt with in Chapter IX of the Act. The learned Government Pleaders, in particular, relied upon section 56 and 57 of the Act to show that section 58 can have no bearing regarding the charge or otherwise or the rate which is dealt with u/s 3(3) of the Act. On the other hand, broadly the contention of the learned Government Pleader is that section 58 can, if at all be considered to mean that the procedure available under the statute in respect of the charge, assessment, collection and recovery which is available for purposes of agricultural Income Tax, are also equally available in respect of the charge, assessment collection and levy of super-tax.

Before I consider the contentions of the learned counsel, this is a proper stage to advert to the scheme of the Agricultural Income Tax Act. Section 2(a) defines the expression "agricultural income", section 2(b) "agricultural Income Tax, section 2(m) "person", which will admittedly include also a Marumakkathayam tarwad, like the petitioner before me, and section 2(s) defines the expression "total agricultural income".

The Act also is broadly, so far as it is material for the present purpose, divided into Chapters dealing with Charge of Agricultural Income Tax, Chapter II, Return of Income, Assessment, etc., Chapter V; Recovery of Tax and Penalties, Chapter VI; and Super-tax Chapter IX. Sections 56, 57 and 58 are the only three

sections, which find a place in Chapter IX relating to super-tax.

Section 3(1) is the charging section. Though, no doubt, Chapter II itself is entitled Charge of Agricultural Income Tax and the heading of section 3 also is Charge of Agricultural Income Tax section 3(1) is really the charging section. Section 3(1) provides that agricultural Income Tax, at the rate or rates specified in the Schedule to this Act shall be charged for each financial year in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every person. Pausing here for a minute, though no doubt the sub-section uses the expression "rate or rates specified in the Schedule to this Act", it will be seen that Part I of the Schedule really deals with the rates of agricultural Income Tax and Part II of the Schedule really deals with the rates of super-tax. Therefore, sub-section (1) of section 3 is the charging section and it also refers to the rate as mentioned in the Schedule of the Act. In my view, sub-sections (2), (3), (4) and (5) of section 3 are to be considered really as provisions or exceptions to section 3(1) regarding rates. But for the special provisions mentioned therein the liability for payment of tax will be at the flat rate mentioned in Part I of the Schedule to the Act and as specifically referred to in section 3(1) of the Act.

I am omitting from consideration sub-section (2) section 3. Sub-section (3) of section 3, which really looms large in these proceedings is as follows :

"3. (3) In the case of an undivided Aliasanthana family or branch or Marumakkathayam tarwad including a Nambudiri family or a family like that of the Moothathu or any other class governed by the law applicable to Nambudiries consisting of more than five members and whose agricultural income exceeds six thousands rupees, the tax shall be assessed at the average rate applicable to the share of the agricultural income due to five members of the family or to six thousands rupees whichever is higher."

It will be seen that under this sub-section the particular "persons" mentioned therein which takes in also a Marumakkathayam tarwad, like the petitioner before me, and consists of more than five members and whose agricultural income exceeds six thousands rupees, in respect of such families it is categorically stated that "the tax shall be assessed at the average rate applicable to the share of the agricultural income due to five members of the family or to six thousand rupees, whichever is higher". As I have already pointed out, with reference to the order of assessment, that it is on the basis of sub-section (3) of section 3 that the officer has fixed the share income due to five members of this tarwad of seventeen members in the sum of Rs. 14,885 and works out the rate at Rs. 10.77 and at this rate agricultural Income Tax is calculated on the total income of Rs. 50,606.

But for this specific provision in sub-section (3) of section 3 whereby some concession regarding the rate is shown to the persons mentioned therein including a Marumakkathayam tarwad, the tax will be assessed on the income of

these persons, not at the concessional rate referred to in sub-section (3), but really on the flat rate in the Schedule as will be clear by the express provision in the tax to be assessed contained in section 3(1).

Similarly, the concession in the tax to be assessed at the average rate is again given to an undivided Hindu family which satisfied the particular requirements mentioned in sub-section (4) of section 3. Similarly, sub-section (5) also gives some concession in the matter of the tax being assessed at the rate applicable to the agricultural income of each tenant-in-common in the case of persons holding property as tenants-in-common. Before I pass on to certain other sections, it is necessary to once again emphasise the scope of sub-section (3) of section 3.

Mr. V. K. K. Menon is perfectly justified in his contention that the legislature, by enacting this sub-section (3) of section 3, did intend to give some sort of concession or relief to persons which takes in also a Marumakkathayam tarwad in the matter of assessment to agricultural Income Tax. But the learned counsel proceeds further and urges that the same concession should be considered to have been given in respect of such families even in the matter of assessment of super-tax as well. That is the point which is in controversy and which has to be considered in this writ petition.

The other provisions which have to be dealt with are section 10 and the sections in Chapter IX dealing with levy of super-tax, Section 10 is really the exemption section which, in my view, does not have much of significance in considering the matter on hand. But I am adverting to it because some of the clauses in section 10, namely, seen when a reference is made to section 58 of the Act. Section 10 deals only with the exemption from assessment of Income Tax.

Now coming to the chapter dealing with super-tax, as I mentioned earlier, it is Chapter IX. In Chapter IX there are three sections, namely sections 56, 57 and 58. Section 56 relates to charge of Income Tax which more or less corresponds to section 3(1) which makes the charge of agricultural Income Tax and I have already adverted to the same. Section 57 deals with total agricultural income for purpose of super-tax. I have to advert to these two sections in great detail immediately. Section 58 relates to application of the Act to super-tax. Section 58, which has been very strongly relied upon by Mr. V. K. K. Menon, runs as follows :

"58. All the provisions of this Act relating to the charge, assessment, collection and recovery of agricultural Income Tax except those contained in sub-section (1) of section 3 of section 3 and clauses (c) (d) and (e) of section 10 shall apply so far as may be to the charge, assessment, collection and recovery of super-tax."

Section 56, which is the charging section, excluding the two provisos which are no relevant for the present purpose, runs as follows :

"56. Charge of super-tax - In additions to the agricultural Income Tax charged for any year, there shall be charged, levied and paid for that year in respect of

the total agricultural income of the previous year of any individual, Hindu undivided family, undivided Aliyasanthana family or branch or Marumakkathayam tarwad, company, unregistered firm or other association of persons not being a registered firm, or the partners of the firm or members of the association individually an additional duty of agricultural Income Tax (in this Act referred to as super-tax) at the rate or rates laid down in Part II of the Schedule."

It will be seen that u/s 56 extracted above, an addition to the agricultural Income Tax is made in respect of the total agricultural income of the previous years of the various persons mentioned therein which includes also a Marumakkathayam tarwad. Apart from that, it is also specifically stated that it is an additional duty of agricultural Income Tax which is referred to as super-tax that is levied and it also specifically says that the levy is to be "at the rate or rates laid down in Part II of the Schedule".

I have already adverted to the two parts in the Schedule, Part I relating to rate of agricultural Income Tax and Part II dealing with rate of super-tax. Therefore, section 56, apart from making a levy of super-tax, also clearly indicates that the said levy, as an additional duty, is to in relation to super-tax, is more or less identical to section 3 (1), in relation to agricultural Income Tax.

Section 57 again, in my view, is a fairly important section. It deals with total agricultural income for purposes of super-tax. That section runs as follows :

"57. Total agricultural income for purposes of super-tax. - Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, undivided Aliyasanthana family or branch or Marumakkathayam tarwad, company, unregistered firm, or other association of persons shall, for the purpose of super-tax be the total agricultural income as assessed for the purpose of agricultural Income Tax and where an assessment of total income has become final and conclusive for the purposes of agricultural Income Tax for any year, super-tax for the same year."

From the section extracted above, it will be seen that the total income of the various persons mentioned therein including a Marumakkathayam tarwad, for the purposes of super-tax, is the total agricultural income as assessed for the purpose of agricultural Income Tax.

Section 58 I have already extracted.

According to Mr. V. K. K. Menon, section 58 clearly states that all the provisions in the Act relating to (a) charge, (b) assessment, (c) collection and (d) recovery of agricultural Income Tax, except those contained in sub-section (1) of section 3 and clauses (c) and (e) of section 10, shall apply, so far as may be to the charge, assessment, collection and recovery of super-tax.

Mr. V. K. K. Menon, learned counsel, urged that sub-section (1) of section 3 has been omitted u/s 58, because section 56 has taken the place of making a charge of super-tax. Therefore, the learned counsel urged that sub-section (3) of section

3, which relates to the charge, is also taken in by section 58, when it says that all those provisions will apply relating to super-tax also. I am not inclined to accept this contention of the learned counsel. No doubt Mr. V. K. K. Menon referred me to a decision of the Supreme Court regarding as to what sections in the Indian Income Tax Act are to be considered as charging sections. In my opinion, that decision does not render any assistance regarding the matter on hand.

Section 56, I have already pointed out, clearly state that it is to be an additional duty of agricultural Income Tax or super-tax at the rate or rates laid down in Part I of the schedule.

I have already stated that section 3(1) also states that there is to be a levy of agricultural Income Tax at the rates mentioned in the Schedule. If section 3(1) has stood by itself, without the further sub-section will have to pay agricultural Income Tax, not at the concessional rate, but at the uniform rate prescribed in Part I of the Schedule.

Section 56 does not make any such exception whatsoever, so far as I could seem because it says that the rate is to be as laid down in Part II of the Schedule.

The other necessary elements for purpose of fixing the rate and ascertaining the super-tax payable are again to be found in section 57 of the Act. Section 57 clearly states that in respect of the various persons mentioned therein, which includes also a Marumakkathayam tarwad, so far as total income is concerned that total income for purposes of super-tax is the total agricultural income as assessed for purpose of agricultural Income Tax.

Section 3(3) deals with a concessional rate for the purposes of assessment, when it says that the rate is to be on the share income of five members of the family; whereas section 57, in my view, says that for purposes of super-tax what is to be taken into account is the total agricultural income that has been assessed for the purposes of agricultural Income Tax. In the case, there can be no controversy that, under exhibit P-3, the total agricultural income as assessed for the purposes of agricultural Income Tax is a sum of Rs. 50,606. If that is so and, especially in the absence of any indication in the statute that the legislature intended to extend the benefit of a concessional rate in respect of the persons taken in by section 3(3) even regarding the levy of super-tax, in my view, sections 56 and 57 will have to exclusively govern those matters.

I am not inclined to accept the contention of Mr. V. K. K. Menon that because of the provisions contained in section 58 it should be considered that section 3(3) will control the levy of super-tax also. In my view, section 58 has to be understood in the light of what the legislature has already provided by the two preceding sections occurring in the same statute dealing with super-tax, namely, sections 56 and 57. Sections 56 and 57, in my view, deal with all matters which can relate to the question of charge and assessment of super-tax. Therefore, it is not possible to accept the contention of Mr. V. K. K. Menon that section 58 in any

way controls either the specific provisions contained in section 56 or section 57; nor can it be understood to have the effect of making section 3(3) control the provisions governing the levy of super-tax. When special provisions regarding the levy of additional duty by way of super-tax have been made in section 56 and the rate rates as laid down in Part II has also been fixed and when it is further provided in section 57, what is the total income to be taken into account for purpose of levying the super-tax, in my view, section 58 can have application only to matters regarding that procedure applicable for these purposes. Considered in this light, section 58, in my view, is quite clearly, namely that it does not in any way seek to control the other provisions of the statute regarding the levy of super-tax. Section 58 must have its natural meaning, namely, that all provisions by way of procedure and otherwise which are available regarding the charge, assessment, collection and levy of agricultural Income Tax are available also for purposes of charge, assessment, collection and recovery of super-tax. More than that it is not possible to read in the section.

So far as I could seem there is no indication in the statute that the legislature intended also to give a further benefit by way of a concessional rate of assessment regarding the levy of super-tax, even for the special concession and that must be limited only for the purposes of levy and assessment at the particular rate mentioned therein for purposes of agricultural Income Tax alone. The sections dealing with super-tax are separate and have to be dealt with separately from the provision dealing with agricultural Income Tax. Unless there is a further indication to show that this concession u/s 3(3) was intended by the legislature, even for those persons in regard to super-tax, I cannot accept the contention of Mr. V. K. K. Menon that the order of the Agricultural Income Tax Officer, Chittur, exhibit P-3, levying super-tax on the petitioner-tarwad is either illegal or without jurisdiction.

Therefore, the writ petition fails and is dismissed. No order as to costs.

Petition dismissed.