(1994) 02 KL CK 0025

In the High Court Of Kerala

Case No : Writ Appeal No. 316 of 1994-B

E.K. Jose — APPELLANT

Vs

Additional Agricultural Income Tax Officer and Others — RESPONDENT

Date of Decision : 25-02-1994

Acts Referred:
Kerala Agricultural Income Tax Act, 1950 — Section 31

Citation : (1996) 217 ITR 89

Hon'ble Judges : Varghese Kalliath, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : Vincent Panikulangara, for the Appellant;

Judgement

P.A. Mohammed, J.—This is a writ appeal against the judgment of the learned single judge in Original Petition No. 7924 of 1989 filed by the writ petitioner, who is an assessee under the provisions of the Kerala Agricultural Income Tax Act, 1950 (for short, "the Act"). The substantial relief that subsists for consideration in the writ petition is to quash exhibit P-7 order passed by the third respondent, the Commissioner of Agricultural Income Tax, Board of Revenue, Trivandrum, u/s 34 of the Act.

2. This is not a case where the third respondent has entirely rejected the claims of the appellant in revision. The third respondent has in fact directed certain modifications in the matter of estimating yield and expenses for the year 1987-88. Exhibit P-3 assessment order and exhibit P-5 appellate order challenged in the writ petition have necessarily merged in exhibit P-7 order of the third respondent. Thus, we have before us exhibit P-7 order of the Board of Revenue directing the assessing authority to effect certain modifications in the assessment for the year 1987-88 for consideration in this appeal.

3. Learned counsel for the appellant mainly focussed his attack on the estimate of yield from rubber during the year 1987-88. The argument is that there was a sudden increase of annual yield from 23 quintals (for the years 1984-85 to

1986-87) to 46 quintals (for the year 1987-88) and that, therefore, the income estimated for the year 1987-88 cannot be said to be reasonable or fair. In order to substantiate this point, the appellant wants us to rely on the inspection report dated December 28, 1982, obviously discarding exhibit P-l inspection report dated April 28, 1988. This approach as it appears to us, is basically deceptive. When the assessment order in dispute admittedly relates to the year 1987-88, it is difficult for this court to adopt a report relating to an anterior period, that is to say, a report relating to the year 1982-83. What we can legitimately adopt here is the inspection report dated April 28, 1988, which relates to the relevant accounting year even though serious attempt was made to belittle the said report by the appellant. The inspection report made available by an officer not below the rank of an Agricultural Income Tax Officer is a material piece of evidence inasmuch as the officer has the statutory power to enter into any land belonging to an assessee and inspect any accounts, registers and other documents, which such officer considers to be relevant for the purpose of any proceeding under the Act. The evidentiary value of the inspection report cannot be minimised according to the convenience of the assessee. The report is ordinarily prepared after the inspection of the land as authorised by the provisions of the Act and after obtaining the adequate data for fixing the yield from the properties.

4. Exhibit P-l report came to the fore as a result of the sudden inspection made by the officer on April 28, 1988. Of course, the assessee makes serious challenge to the correctness of the results obtained through the inspection. However, the genuineness of the said report cannot be ruled out. Though the inspection was sudden, the assessee''s son who was on the spot had signed the report in token of his being present at the time of inspection. Needless to point out that exhibit P-l report could have been challenged in appropriate proceedings and its evidentiary value could have thus been whittled down if the criticism now advanced against it is proved. The contents of the report were made available according to the appellant, for the first time in the pre assessment notice for the year 1987-88. But it appears to us, no objection was raised in the reply to the pre assessment notice against the findings in the inspection report. Thus, the assessee by his own conduct allowed exhibit P-l report to remain intact and to hold the field. Of course, the pre assessment notice for the year 1987-88 was based on the findings in exhibit P-l report, which was necessarily made as the basis for exhibit P-3 assessment order for the year 1987-88.

5. We cannot countenance the argument that the appellant had no opportunity to contradict the findings in exhibit P-l report. As against exhibit P-3 order of assessment, the appellant had filed an appeal before the second respondent u/s 31 of the Act. The proviso to subsection (4) of Section 31 authorises the Assistant Commissioner who deals with the appeal against an order of assessment to issue commission to ascertain and report the yield and cultivation expenses in appropriate cases. By this proviso, the appellant has been given the right to move an application before the Assistant Commissioner for the aforesaid purposes. According to us, if the appellant had any grievance against exhibit P-l

report, he could have very well moved an application before the Assistant Commissioner under the above provision and obtained a fresh report regarding the correct yield and cultivation expenses. Such a right available under the aforesaid provision has not been made use of by the appellant. Exhibit P-3 assessment order has been confirmed in appeal as per exhibit P-5 by the second respondent In revision against exhibit P-5 order, the Board of Revenue, as pointed out earlier, has directed certain modifications as per exhibit P-7. In the aforesaid background, we do not find our way to interfere with exhibit P-7 revisional order passed by the Board of Revenue.

6. In fact, the learned judge, it appears to us, has very anxiously considered all the points urged before him, even though the points advanced are purely questions of fact which are not normally gone into in the present proceeding. Further, the jurisdiction of the third respondent, Board of Revenue, u/s 34, it appears to us, has been exercised in a reasonable and proper manner. We have no hesitation to agree with the observation of the learned single judge that the findings entered by respondents Nos. 1, 2 and 3 are neither perverse nor unsupported by any materials. We feel the conclusions arrived at by the learned single judge are sound, fair and reasonable and so they are only to be approved without any reserve. We do so.

7. We see no merit in this writ appeal. It is, accordingly, dismissed.