

(1978) 03 KL CK 0017

In the High Court Of Kerala

Case No : Income-tax Reference No. 68 of 1976

G. Karunakaran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-03-1978

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 34

Citation : (1979) 120 ITR 571

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : A.K. Avirah and K.C. Devassia, for the Appellant; Govenment Pleader, for the Respondent

Judgement

Gopalan Nambiyar, C.J.—The Agricultural Income Tax and Sales Tax Appellate Tribunal, Trivandrum, has referred the following question for our determination :

" Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that, when, after the original assessment is set aside by the Commissioner of Agrl. Income Tax u/s 34 of the Agrl. Income Tax Act, and it is remanded for fresh disposal after a proper inspection of the holdings of the applicant and the assessing officer is including the income from certain items of properties extending to 21.29 acres, which is left out in the original assessment, the revised assessment order dated November 29, 1971, is only a continuation of the proceedings already initiated and that it is not a case where supplementary steps have been initiated to bring into assessment any escaped income after the time allowed for the completion of the original assessment ? "

2. For the years 1967-68 and 1969-70, the assessee filed a return disclosing an extent of 30.14 acres of cardamom land. He was assessed to Income Tax against which he filed a revision to the Board of Revenue. By order dated March 24,1970, the Board of Revenue set aside the order and remanded the matter to the assessing authority for a fresh assessment after inspection of the property. Inspection of the property was made on May 1, 1971, and the assessment was

finalised on November 29, 1971, for the assessment years 1967-68 to 1971-72. The assessment thus finalised took in an additional extent of 21.29 acres of land in addition to the 30.14 acres that had been disclosed in the return. Also, the assessment covered the years 1967-68 to 1971-72, both inclusive. The assessment order was finalised on November 29, 1971.

3. The assessee's contention is that in so far as the assessing authority took into account the additional income from the additional extent of 21.29 acres of land, there was an assessment of escaped income u/s 35 of the Act and, therefore, the assessing authority must be held bound by the time within which an escaped income should be assessed as provided in the section itself. In support of this proposition, the assessee relied on *Suppan Chettiar v. Commr. of Agrl. I.T.* [1958] KLJ 834.

4. It seems to us that the assessee's argument proceeds on a misconception. The assessment originally made on the basis that the extent of the land was 21.29 acres was set aside on revision by the Board of Revenue, and as stated in the statement of the case, the matter was remanded to the assessing authority for revising the assessment after inspection of the holdings. The remand order is not part of the record, and going by its gist and purport as given in the statement of the case, we understand that order to have wiped the state clean and to have given the authority a free hand to deal with the assessment. There is no justification thereafter for us to hold that the assessing authority was not justified in travelling beyond the extent of 30.14 acres disclosed in the original return. Nor, on the strength of the numerous recent decisions which have clarified the principle, is there any justification for importing the period of limitation to the assessment carried out in pursuance of an order of remand directed by the appellate authority. To that effect is the ruling of the Supreme Court in *Commissioner of Agricultural Income Tax, Trivandrum Vs. Lucy Kochuvareed*, reversing the decision of this court in *SMT. LUCY KOCHUVAREED Vs. COMMISSIONER OF AGRICULTURAL Income Tax, TRIVANDRUM*. Other decisions of the Supreme Court have also expounded the same principle. Counsel for the revenue also invited our attention to the decision of the Supreme Court in *Ghanshyamdas v. Regional Asst. Commr. of Sales Tax* [1963] 14 STC 976, for the proposition that there could be no escapement of income so long as proceedings for assessment are pending. The same principle was stated and applied in *Dy. Commr. of Agrl. I.T. & S.T. v. Philipose* [1967] KLT 693 ; [1967] KLJ 668. That proceedings by way of a fresh assessment in pursuance of an order of remand are only continuation of the original proceedings has been ruled in *Addl. Asst. Commr. of S.T. v. Firm Jagmohandas Vijay Kumar* [1970] 25 STC 74 (SC). In the light of the above principles, we answer the question referred in the affirmative, i.e., against the assessee and in favour of the revenue. No order as to costs.

5. A copy of this judgment under the seal of the court and the signature of the Registrar will be communicated to the Tribunal as required by law.