(1946) 01 PAT CK 0021

In the Patna High Court

Case No : Statement of Case under Section 25 (2) of the Bihar Agricultural Income Tax Act (VII of 1938) by the Board of Agricultural Income Tax, Bihar. Miscellaneous Judicial Case No. 112 of 1942

GOVERNMENT OF BIHAR APPELLANT

Vs

MOTIHARI ESTATE LTD. RESPONDENT

Date of Decision : 09-01-1946

Acts Referred:
Bihar Agricultural Income Tax Act, 1938 — Section 25(2), 7(1)

Citation : (1946) 14 ITR 267

Hon'ble Judges : Fazl Ali, C.J;Sinha, J;Manohar Lall, J

Bench : Full Bench

Judgement

MANOHAR LALL, J. - This is a reference u/s 25(2) of the Bihar Agricultural Income Tax Actr - hereinafter called the Act - by the Board of Agricultural Income Tax, Bihar - hereinafter called the Board - to this Court at the instance of the assessee to answer the contention that "the income of the assessee should have been computed according to the provisions of Section 7(1)(a), and not u/s 7(1)(b), and on this point the Agricultural Income Tax Officer was wrong in his interpretation of the provisions of Section 17(3) of the Act."

The undisputed facts are these. For the year of assessment 1940-41 the assessee filed a return on the 14th November, 1941, before the Agricultural Income Tax Officer in respect of his agricultural income for the year ending 31st July, 1940. The income returned was Rs. 1,35,088 and was based upon the actual receipts and expenditure in the accounting period. A balance sheet as on 31st July, 1940, showing the revenue and profit and loss account for this year prepared by the incorporated accountants was also filed. On the 26th May, 1941, a notice was served by the Income Tax Officer on the assessee to submit accounts and other evidence in support of his return as the officer was not satisfied that the return was correct and complete. The assessee instead of submitting the accounts filed an application stating that he should be assessed u/s 7(1)(a). This provision enacts that "the agriculture income mentioned in subclause (2) of clause (a) of Section 2 shall, at the option of the assessee, be deemed, for the purposes of the assessment to agricultural Income Tax, to be a multiple" which shall not exceed six -the multiple has now been raised to eight. That application is dated the 23rd of May, 1941, and is to be found at page 13. It states that on the 13th of February, 1941, the assessee submitted a return for the assessment year 1940-41 and that the officer will kindly treat that return as cancelled and substitute the attached one in its place. It is stated further : "By virtue of the option allowed to us u/s 7(1) of the Bihar Agricultural Income Tax Act, 1938, we hereby adopt the method of assessment as laid down under sub-section (a) of Section 7(1). We have shown in the return the actual rent paid, and in order to arrive at the assessable income this sum will have to be multiplied by the multiple fixed for other district by the Bihar Board of Agricultural Income Tax." It will be noticed that this application was made before the service on the assessee of the notice issued by the Income Tax Officer u/s 18(2) of the Act - the notice was served on the 26th of May requiring the assessee to submit accounts and evidence on the 10th of June, 1941. On the 3rd of June, 1941, the assessee was informed by the Income Tax Officer that as he had already exercised his option in submitting the original return, he cannot be allowed to change the basis. On the 5th of June, 1941, the incorporated accountants on behalf of the assessee wrote a letter to the Income Tax Officer, which is to be found at page 14, stating that they have been asked by the assessee to send a reply to the letter of the 3rd of June, 1941. The accountants after drawing attention to Section 17(3) of the Act, which gives the assessee every right to make a revised return or a fresh return before the assessment is made, requested the Income Tax Officer to accept a fresh return filed by the assessee. The Income Tax did not agree and proceeded to make an assessment based on the original return and found that the actual amount of agricultural receipts. By an order dated the 21st of June, 1941, the assessable income was fixed at Rs. 1,95,068.

Against this assessment the assessee preferred an appeal to the Commissioner of Agricultural Income Tax, who by an order dated the 27th January, 1942, reduced the assessment to Rs. 1,94,465. The assessee then preferred two applications to the Board on the 24th March, 1942. He prayed that the order of the Commissioner be revised inter alia on the ground that the assessee should have been assessed u/s 7(1)(a) and not u/s 7(1)(b) of the Act. By the second petition it was prayed that the question of law should be referred to the High Court for decision. On the 10th October, 1942, the Board came to the conclusion that there was a question of law whether the assessee was entitled to exercise his option twice before the assessment, and that this question would be referred to the High Court. That question accordingly has been referred to this Court. There were two either minor questions which are disposed of by the board and no reference has been made to this Court.

In my opinion the assessee was entitled in the circumstances stated above to insist that he should be assessed u/s 7(1)(a) of the Act. Section 17(3) is clear and allows the assessee to file a return, if he has not filed it already, provided the assessment has not been made by that time. It is provided clearly in that clause that "any return so made shall be deemed to be made in due time under this section." It is admitted that as the time when the assessee filed his second return on the 23rd May, 1941, the assessment had not been made. The assessee, therefore, was within his right to insist by the revised return that he should be assessed u/s 7(1)(a) of the Act.

It is argued on behalf of the Department that the assessee had already exercised his option inasmuch as filed a return in which he showed the figures of the actual receipts in the previous year, and, therefore, he cannot be allowed to change the option already made. But I do not see that the assessee had made any such option. All he did was to file a return in which he put down certain figures as the amount of agricultural income received by him in the previous year. When the Income Tax Officer did not accept the return as correct and the assessee was asked to produce evidence in support thereof, the assessee then exercised his option by stating that the accounts need not be produced as he preferred to be assessed u/s 7(1)(a) and he furnished material to that effect in the return.

For these reasons I would answer the question in the affirmative namely that the income of the assessee should have been computed according to the provisions of Section 7(1)(a) of the Act and that on this point the Agricultural Income Tax Officer was wrong in his interpretation of the Provisions of Section 17(3) of the Act.

As the assessee succeeded in his contention, he is entitled to the costs of this Court : hearing fee Rs. 150. The assessee will also be entitled to the refund of Rs. 100 which has been deposited with the Board.

FAZL ALI, C.J. - I agree.

SINHA, J. - I agree.

Reference answered accordingly.