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(1929) 11 PAT CK 0007

In the Patna High Court

J.M. Casey APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 25-11-1929

Acts Referred:
Income Tax Act, 1922 — Section 66(2)

Citation : AIR 1930 Patna 44 : 123 Ind. Cas. 610

Hon'ble Judges : Courtney-Terrell, C.J;Kulwant Sahay, J;Das, J

Bench : Full Bench

Judgement

Courtney-Terrell, C.J.—This is a case stated by the Commissioner of Income Tax u/s 66 (2), Income Tax Act XI of 1922.

2. The assessee among other activities of an agricultural nature cultivates aloe plants and from them by means of machinery prepares sisal fibre which he sells in the market. The department do not claim to recover tax on such portion of his profits as is attributable to the production of the aloe leaves but it is contended that the manufacture of the fibre from these leaves constitutes a manufacturing process as opposed to an agricultural process the profits from which are not exempt as agricultural income u/s 4 Sub-section (3) (viii).

3. The aloe plant from which the assessee produces the fibre is one variety of a class of plants indigenous to India and growing freely in the wild state. The principal use of these aloe plants is to provide hedges but hitherto they have not been the subject of regular cultivation. It has long been known that the leaves of some varieties could be so treated as to yield a fibre suitable for the manufacture of rope and matting and villagers have occasionally been found to take the leaves of the wild plant and by the use of a very rough end laborious process to extract fibre therefrom but until suitable machinery could be devised for the purpose it has not been an economic proposition to cultivate the plant for the purpose of producing the fibre. In short the cultivation of the plant had to await the introduction of a process for producing the fibre therefrom on an economic scale. When this had been accomplished the deliberate cultivation of the plant

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and the selection of good varieties became profitable and in British East Africa and some other parts of the world it has become a regular industry. In India, however, it has until now assumed very email proportions and the asseesee is one of the pioneers of the enterprise.

4. The contention urged by the department is that the agricultural part of the industry terminates at the production of the leaf and its cutting and carting. Now u/s 2 (1) (b) of the Act agricultural income means:

Any income derived from such land by

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised, or received by him fit to be taken to market or

(iii) the sale by a cultivator or receiver of rent in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of nature described in Sub-clause (ii).

5. The question for our decision is whether any part of the profits resulting from the growing of sisal and the manufacture from it of the fibre is taxable or whether, on the other hand, the whole of the profits are exempt as being purely agricultural income. Now it is perfectly clear from the wording of the section that an agricultural process does not necessarily stop short at the removal of the plant from the soil. In the case of, for example, cereal plants they must be threshed and winnowed in order to produce the grain and the process of threshing and winnowing is one ordinarily employed by the cultivator to render the produce fit to be taken to market. It is further to be noted that in order to test whether the process employed by the assessee is an agricultural process it would be possible to compare it with that which is " ordinarily employed by a cultivator, " that is to say, it must be found that the plant with which we are concerned is in fact cultivated and that the cultivator in order to render the produce fit to be taken to market ordinarily employs a process to treat the produce of actual cultivation. Now in this case there is, in the first place no cultivation of the aloe plant save in connexion with the economic process involving the use of machinery such as is employed by the assessee and, therefore, the process "ordinarily employed" is in fact that used by the assessee. In spite of the enquiries which the department has been able to make nothing in connexion with the cultivation of aloe fibre has been discovered save that aloe leaves are bought by certain jail authorities from persons who cultivate it and supply the leaves to the jail, the jail being apparently the only maker which such cultivators have for the disposal of their leaves. The leaves so bought by the jail authorities are treated by the prisoners by means of the same laborious and uneconomic process which is employed by some villagers in treating the leaves of the wild and uncultivated plant. The object of the manufacture in jails is not the conducting of an economic process which shall render profitable the

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cultivation of the aloe plant but merely to keep the prisoners employed. on sufficiently laborious and punitive work. In other words this instance relied on by the department does not provide a standard of comparison for the process employed by the assessee.

6. The word "market" in the section implies a real centre of economic exchange and the purchase by jails is merely an artificial condition having no relation to a market for agricultural produce. The department relies upon the decision of the Calcutta High Court in the case of Killing Valley Tea Co. Ltd. v. Secretary of State for India 61 Ind. Cas. 107 : 48 C. 161 : 32 C.L.J. 421. That case was concerned with the state of affairs in connexion with the manufacture of tea. The assessees employed a process of manufacture applied to the leaf which involved the use of costly machinery and was of a complicated nature but the Court was able to compare this process with a process which had ordinarily been employed by the cultivators of the tea bush before modern manufacture had been introduced, that is to say, the dry leaf had long been known as a marketable commodity and the preparation of the dried leaf in its market form had been carried on by known processes of a simple nature. Here the standard of comparison was available and the modern manufacturing process could be clearly differentiated from it. But in the case of sisal fibre no such standard of comparison is available, firstly, because other than the so-called jail manufacture no cultivation for the sisal aloe plant appears to have been practised save in connexion with the modern process of manufacture of the fibre and such manufacture of the fibre as had in earlier days been practised had not been associated with the cultivated plant but with the wild plant as casually found. Further there is no market in the proper sense of the word for aloe leaves. A fact may be noted in connexion with the affidavit sworn by the jailor '' of the Motihari Jail which is indicative of the small extent to which the cultivation of the aloe plant is understood. The jailor uses the words "aloe fibre" as synonymous with the word "sunn." Now it is well-known that sunnfibre is produced from a plant which has no affinity whatever with the aloe plant. The manufacture of sunn fibre is a well understood and entirely distinct industry. The conclusion at which I arrive is that if a generalization may be made from the single instance available, then the process ordinarily employed by the cultivator of the aloe plant in order to render his produce fit to be taken to market is that in fact employed by the assessee and the whole of the profits derived by him from the manufacture of sisal fibre is agricultural income and as such is exempt from taxation. It may be that in the future the economic conditions may change. If the growth of the aloe leaf should become established as an agricultural industry by itself, and if the manufacturers of sisal fibre should cease to cultivate the plant themselves and should purchase the leaves in an open market then such circumstances may possibly require re-consideration in the light of the Income Tax law but the circumstances which at present prevail, in my opinion, require that the question put to us should be decided in favour of the assessee. The assessee is entitled to his costs of this reference. Hearing fee five gold mohurs.

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Das, J.

7. I agree.

Kulwant Sahay, J.

8. I agree.

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