
(1997) 03 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule No. 1198 of 1994

Jorehaut Group Ltd.

APPELLANT

Vs

Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Assam Agricultural Income Tax Act, 1939 — Section 8(2)

Citation : (1997) 226 ITR 622

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : A.K. Saraf and S. Mitra, for the Appellant; A.K. Sarma, for the Respondent

Judgement

N.G. Das, J.—The question involved in this writ petition under Article 226 of the Constitution of India is as to whether cess to be paid by the petitioner under the Assam Taxation (on Specified Land) Act, 1990, is to be deducted from 60 per cent of the computed income of tea.

2. Heard Dr. Saraf, learned counsel appearing on behalf of the petitioner, and Mr. A.K. Sarma, learned counsel appearing on behalf of the respondent.

3. To appreciate the contention canvassed at the Bar by learned counsel for the parties, the facts relevant for the purpose may be stated as under :

The petitioner, which is a public limited company, doing business of tea after cultivation and manufacture of the same paid cess to the tune of Rs. 17,70,096 for the assessment year 1993-94 on the green leaves under the Assam Taxation (on Specified Land) Act, 1990. It is stated that in view of the provisions laid down u/s 8(2)(e) of the Agricultural Income Tax Act, 1939, the cess paid is to be deducted only from 60 per cent of the computed income of tea. The petitioner, therefore, claimed deduction of a sum of Rs. 17,70,096 from 60 per cent of the income that is Rs. 21,07,843. Thus, after paying the aforesaid amount as cess, the petitioner approached for a tax clearance certificate by submitting an

application on January 24, 1994 (annexure-2), but respondent No. 1, vide his letter No. J-46/3322 dated January 25, 1994 (annexure-III), informed the petitioner that he would not be entitled to get the tax clearance certificate as for his deduction of the amount of cess remitted from 60 per cent of the agricultural income in place of 100 per cent of the composite income was not approved.

4. The petitioner has further contended that in view of the provisions laid down u/s 8(2)(e) of the Assam Agricultural Income Tax Act, 1939, which is very much in force, that the petitioner is entitled to get the tax deduction of cess from 60 per cent of the composite income. In this context, it has further been averred that in view of Rule 8 of the Income Tax Rules, 1962, 40 per cent of such income shall be deemed to be liable to tax and that Sub-rule (2) of the Assam Agricultural Income Tax Rules lays down as to how the computing of the agricultural income has to be made.

5. The petitioner has, therefore, contended that the respondents' letter dated January 25, 1994, contained in annexure "III" and letter dated January 27, 1994 contained in annexure "IV" are liable to be quashed and accordingly appropriate writ should be issued.

6. The respondents did not file any counter. However, Mr. A.K. Sarma, learned counsel appearing on behalf of the respondents, has contended that the letter written by the Commissioner, of Taxes, Assam, contained in annexure-V cannot be relied on as the petitioner has already been informed that even though the Commissioner of Taxes, Assam, informed the petitioner that he is entitled to deduction of the amount from 60 per cent of the composite income the matter was subsequently disputed by the State Government and hence no reliance can be placed upon the aforesaid letter. Dr. Saraf, learned counsel appearing on behalf of the petitioner, has however drawn my attention to Section 2(1A) of the Income Tax Act, 1961, to show what agricultural income means. According to Section 2(1A), "agricultural income" means any rent or revenue derived from land which is situated in India and is used for agricultural purposes; (b) any income derived from such land by--(i) agriculture ; or (ii) . . . In this context, it has also been submitted that Rule 8 of the Income Tax rules, 1962, will also show that income derived from the sale of tea grown and manufactured shall be computed as if it was an income derived from business and 40 per cent of such income shall be deemed to be income liable to tax. In view of the above provisions, Dr. Saraf likes to emphasise that since 40 per cent of such income shall be deemed to be income liable to tax, the petitioner, in view of the definition u/s 2(1A) of the Income Tax Act read with the provisions as laid down u/s 8(2)(e) of the Agricultural Income Tax Act, is entitled to the deduction from the 60 per cent of the composite income. Section 8(2)(e) reads :

"Rules prescribing the manner of determining the net amount of agricultural income for the purpose of this clause shall provide that the following deductions shall be made from the gross amount of such income, namely, . . .

(e) any tax or rate paid under any enactment in force in Assam on the cultivation or sale of the crop from which such agricultural income is derived."

7. In view of the above quoted position, Dr. Saraf argues that since the petitioner has already paid cess which is nothing but a tax, he is very much entitled to get the deduction from 60 per cent of the composite income. Though the term "cess" has not been defined in the Agricultural Income Tax Act, 1939, Dr. Saraf has, however, referred to an observation of the Supreme Court in *Orissa Cement Ltd. v. State of Orissa* [1991] Su 1 SCC 430. Under paragraph 40 of the judgment their Lordships made the following observation . . . "In other words, the levy cannot be correlated to any services rendered or to be rendered by the State Government to the class of persons from whom the levy is collected. Whether royalty is a tax or not, the cess is only a tax and cannot be properly described as a fee."

8. The other decision referred to by Dr. Saraf in respect of his contention that cess is also a tax is a decision of the Lahore High Court rendered in the case of *Daulat Ram v. Municipal Committee*, AIR 1941 Lah 40. In the aforesaid case it was argued before the court that cess is something which is a tax or duty. Consequently, the learned single judge was inclined to accept this contention and made the following observation that "Cess as defined in Murray's Oxford Dictionary means specially in relation to India "a tax levied for a specific object". It is no doubt said that some times it meant a rate levied by a local authority and for local purposes, but, as explained there, is now superseded in general English use by the word "rate". It is also observed by the learned judge that tax in local parlance also means nothing more than, money which individuals are compelled to pay for public purposes. It is impossible, therefore, to distinguish tax from cess or duty.

9. In view of the aforesaid decision particularly the observation of the Supreme Court as quoted above I am of the view that cess is also a tax. Therefore, in view of the provisions laid down u/s 8(2)(e) the petitioner is entitled to get the deduction of tax from 60 per cent of the composite agricultural income. The impugned letters, namely, letter dated January 25, 1994, contained in annexure-III and letter dated January 27, 1994, contained in annexure-IV are quashed. The respondents are directed to issue the tax clearance certificate provided the petitioner has paid the tax on 60 per cent of the composite income after deduction of the cess amount. With the aforesaid order and direction this writ petition is disposed of. No costs.