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**(1979) 06 CAL CK 0021**  
**In the Calcutta High Court**  
**Case No : C.R. Case No. 7846 (W) of 1974**

Kashinath Prasad

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 15-06-1979

**Acts Referred:**

West Bengal Agricultural Income Tax Act, 1944 — Section 25(5)

**Citation :** 84 CWN 28 : (1983) 139 ITR 116

**Hon'ble Judges :** S.K. Datta, J

**Bench :** Single Bench

**Advocate :** Nanda Lal Pal and Rabindra Nath Sil, for the Appellant; Arun Prakash Chatterjee and Nirmala Kumari Chaturbedi for respondents Nos. 1 to 4, for the Respondent

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## Judgement

Salil Kumar Datta, J.—In this rule, the petitioner challenges two best judgment assessment orders for the assessment years 1969-70 and 1970-71. In, respect of the assessment year 1969-70, the order is dated the 9th of June, 1972, and there it appears that the petitioner did not file any return and, accordingly, he was assessed u/s 25 of the West Bengal Agrl. I.T. Act, 1944. In arriving at the agricultural income of the petitioner, the Agrl. ITO computed the value of the paddy as also deductions and the tax payable as follows :

"Assessed u/s 25 for failure to submit return.

Land: 25 acres of agrl. land as per past records has been accepted for the purpose of assessment in the absence of any return.

In the absence of any return, the production of crops which are valued as per Rule 4(2)(a) has been estimated on the basis of the prevailing local average.

Computed thus :

Aman 25 acres X 6.50 qlts. acres X Rs. 80 per qlt. = Rs. 13,000

Straw 25 acres X 2 khns. acres X Rs. 60 per qlt. = Rs. 3,000

Less : 50% cost of cultivation = Rs. 16,000    Rs. 8,000

T. A. I.    Rs. 8,000

A. I. Tax imposed Rs. 415 payable by 29-9-72."

2. In respect of assessment order for 1970-71, it appears that though a return was filed by the petitioner's agent, Byomkesh Banerjee, none appeared at the hearing and the case was assessed ex parte u/s 25(5) and it was recorded as follows :

"None appears. Hence, the case has been assessed ex parte u/s 25. Land. In the absence of any evidence to the contrary, this assessee is deemed to have derived income from 25 acres of agrl. land as per past assessment record.

In the absence of any accounts the average rate of production of crops which are valued as per Rule 4(2)(a) has been estimated on the basis of the prevailing local average.

Computed thus :

Aman paddy 25 acres X 7 qtls. acres X Rs. 70 per qlt. = Rs. 12,250

Aman straw 25 acres X 2 khns. acres X Rs. 50 per khn. = Rs. 2,500

Rs.14,750

Less :

50% cost of cultivation Rs. 7,375

Rent on estimate Rs. 50    Rs. 7,425

T. A. I.    Rs. 7,325

A. I. Tax imposed Rs. 361 payable by 27-6-74."

3. The petitioner challenged the assessment on three grounds. The first ground is that the officer made an error in computing the income on the basis of the paddy deemed to have been received by the assessee. According to him, from a reference to Sections 3, 4 and 7, it would appear that the assessee can be charged only in respect of the value of the agricultural produce actually received by him and there cannot be any basis for the quantum of paddy deemed to have been received or receivable by him. In other words, the receipt must be the actual receipt. Mr. Pal, the learned counsel for the petitioner, relied on a decision of Dharendra Nath Patra Das Vs. Agricultural Income Tax Officer, Range-II, , in which it was observed that it was not material as to what was receivable by the assessee in such a case. What is actually received is the material consideration for computation. In these cases, as we have seen, no return was filed for the earlier year while for the latter year though a return was filed, no books of accounts or papers were produced in support. Accordingly, under the provisions u/s 25, it was open to the Assessing Officer to make a best judgment

assessment of the agricultural income, which is to be deemed to have been received by him, after considering all attending circumstances. When a best judgment assessment is being made, there is no other way to make an assessment except to determine the tax payable by the assessee on the basis of such determination of the paddy and straw the assessee is deemed to have received for any year after allowing all the deductions permissible under the law. In the very nature of things, in a case of best judgment assessment, it is not possible for the assessing authority to determine the amount that was actually received by him (the assessee). The computation must proceed on the basis of the paddy and the income therefrom which the assessee is deemed to have received having regard to the relevant circumstances. In this case, we have seen that the computation was made on the basis of 6.50/7 quintals yield per acre which in the affidavit-in-opposition was stated to be based on records which it appears the State maintains with reference to the locality, to which there is no rebuttal by any affidavit-in-reply. In view of this position it is not possible to accept the bare certificate of the Anchal Pradhan in respect thereof on which reliance has been placed by the assessee. I, accordingly, hold that there is no error in the computation of the agricultural income made by the Agri. ITO.

4. It is further stated that in respect of the second assessment the assessee had sold away a large portion of his property during the period so that he could not be assessed on 25 acres of land. This fact was not before the Assessing Officer and, therefore, there was no material established, for the Assessing Officer, to be taken into account that the assessee had not been in possession of such an area of land. Accordingly, the assessment order cannot be challenged for the non-consideration of a fact which was not brought to the notice of the assessing authority by the lapse of the assessee.

5. It is further contended that the lands were in possession of the bargadars and under the West Bengal Land Reforms Act, 75 per cent. of the produce is to be given to the bargadars leaving 25 per cent. for owner-assessee. In this case, there is no material before the assessing authority to establish that the lands were in the possession or cultivation of the bargadars. The assessing authority has allowed the maximum allowance permissible in law in computing the net income of the assessee. In these circumstances, I do not find that there is any mistake or error on the part of the assessing authority which can be interfered with in this jurisdiction. It is also obvious that the assessee had an alternative remedy by way of appeal on questions of fact which he failed to avail of. For all these reasons, as all the contentions of the assessee fail, this rule is discharged. All interim orders are vacated. There will be no order as to costs.