(1996) 07 KL CK 0054

In the High Court Of Kerala

Case No : T.R.C. No. 68 of 1996

K.I. Philip — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:
Kerala Agricultural Income Tax Act, 1950 — Section 35(1)

Citation : (1998) 230 ITR 155

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : T.P. Varghese, for the Appellant; V.C. James, Government Pleader, for the Respondent

Judgement

V.V. Kamat, J.—Since the only question for consideration and consequent decision is the question of limitation and the dates stare in the face of the record, this revision case is taken up, after hearing learned counsel for both sides for decision.

2. This relates to the provisions of Section 35 of the Agricultural Income Tax Act, 1950, with regard to the assessment year 1973-74.

3. The proceedings are initiated with regard to the escapement of assessment u/s 35 of the said Act.

4. The provision of Section 35(1) of the Act deals with the situation of escapement of assessment in any financial year. It provides that the Agricultural Income Tax Officer may, at any time within five years of the end of that year, serve on the person liable to pay tax, a notice for action.

5. Certain undisputed dates need to be emphasised. Notice u/s 35(1) is issued on March 30, 1979. A pre-assessment notice is served on the appellant on February 6, 1980, in regard to which the assessee filed his objections on February 22, 1980, and the assessment is completed on February 28, 1980, in regard to which the demand notice has been served on the appellant on April 7,

1980. There is no dispute that the date of service will take the proceedings out of the statutory period of limitation. The assessment year is 1972-73 and the steps appear to have been taken to save limitation expiring on March 31, 1980. This is obviously out of limitation.

6. The crucial question is as to whether the relevant date would be the date of issue or the date of service. The statutory provision--Section 35(1) is abundantly clear that the notice is required to be served on the person liable to pay tax which is wholly different from the date of issuance. The statutory provision cannot be read otherwise to mean that only the notice is required to be issued and it is not necessary that it should be served within the period of limitation. The dates are staring in the face of the record.

7. The Tribunal has considered the position otherwise. It is not permissible to read the statutory provision of Section 35(1) in the manner in which it is sought to be done by the Tribunal emphasising that it is the date of issuance that would be material. The question of limitation is a jurisdictional aspect and it is the duty of the court to determine the question in accordance with the statutory provision in connection with the legislation in question. This court in Dayalan Rajes v. State of Kerala ILR [1979] 1 Ker 600 has precisely considered the same aspect with reference to the understanding of the expression "issued" in the context of the requirement of its actual service on the assessee if found beyond the limit prescribed the proceedings get termed as void ab initio.

8. For the above reasons the revision case succeeds. The impugned order (annexure "A3") dated August 9, 1994, gets quashed and set aside and in its turn the order of the first appellate authority--the Assistant Commissioner of Agricultural Income Tax and Sales Tax, Idukki, at Vandanmedu, dated May 2, 1982, stands restored. The result is that the assessment stands set aside as timebarred.