

(1984) 06 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 10311 of 1983

K.P. Abraham

APPELLANT

Vs

Agricultural I.T.O. Negumangad and Another

RESPONDENT

Date of Decision : 14-06-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) KLJ 496

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : T.L. Viswanatha Iyer and P. Krishnan, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The petitioner is an assessee to agricultural income tax. He was assessed to agricultural income tax for the year 1980-81 by Ext. P1 order dated 15-12-'81. In the said order the income received from the property standing in the name of the wife of the petitioner was also included. It is the case of the petitioner that this property about 8.70 acres of rubber plantations belongs to his wife, Mrs. Leelamma, and the income thereof should not be included in assessing him to agricultural income tax. In paragraph 2 of the Original Petition the petitioner specifically states that this writ petition is concerned with the assessment year 1980-81. Even so, the petitioner has in the prayer portion of the Original Petition, paragraph II, impugned Exts. P3 and P4 orders also. Ext. P3 is an appellate order passed by the Appellate Assistant Commissioner in the case of the petitioner for the years 1976-77 to 1980-81. The assessment made for the year 1980-81 as per Ext. P1 order was confirmed in Ext. P3 in so far as the assessment included the income from the properties standing in the name of the wife. Ext. P4 is an order passed by the Deputy Commissioner in revision. The revision petition filed by the petitioner was dismissed. The petitioner prays for quashing Exts. P1, P3 and P4 orders. The validity of Ext.P3 need be considered only in so far as it relates to 1980-81. The

petitioner's counsel argued that the inclusion of income of 8.70 acres of rubber plantation, which admittedly stands in the name of his wife, is incompetent and not permissible u/s 9(2) of the Agricultural income tax Act. It is argued that there is no specific finding to attract section 9(2) of the Act. Section 9(2) of the Act will not apply. It has not been shown that there was a transfer of the property either directly or indirectly to the petitioner's wife. In effecting the assessment for the year 1980-81 by Ext. P1 order, the Agricultural income tax Officer has stated that the inclusion of the income from the properties in the name of the petitioner's wife was already considered at the time of previous years' assessments and so that affords a basis for him to include the said income for this year also. This has been upheld in revision (P4). The said order is liable to all the infirmities attached to Ext. P1. Counsel for the Revenue sought to sustain Ext. P1 and P4 both on merits and on the ground that the findings in the prior years are relevant and good and until they are shown to be unjustified, the Revenue can rely on the findings entered on identical questions of fact or law, in later years. A detailed consideration, in later years, is uncalled for. The counsel for the Revenue submitted further as follows: In Ext. P3 appellate order, (from 1976-77 onwards) the Appellate Assistant Commissioner has categorically found that the Revenue found on enquiries that the petitioner's wife had no source of income, much less an independent source of income, and the Agricultural income tax Officer on an evaluation of the facts and circumstances found in the previous years' assessments that the property, 8.70 acres of rubber plantation, could have been purchased only with the funds belonging to the petitioner. It was on this basis, the Revenue included the income from that property along with the agricultural income of the petitioner. The finding on that score for the previous years 1976-77 to 1979-80 were consistent in this regard. Even the appellate order, Ext. P3, which is a consolidated order for 1976-77 to 1980-81 was rendered as early as 31-5-1982 more than an year before the filing of the Original Petition. The petitioner could have filed second appeals from Ext. P3 order for the years 1976-77 to 1979-80 and also 1980-81. The petitioner did not do so. The statute has provided an equally efficacious remedy to assail the appellate order for the years 1976-77 to 1980-81 by filing a second appeal. The petitioner did not avail that remedy. It is too late for him now to impugn the order more than one year after the passing of the said order in proceedings under Article 226 of the Constitution. There is no violation of the principles of natural justice in this case, nor is there any attack of any provision of the Act or Rules. In such circumstances, the petitioner is not entitled to invoke Article 226 of the Constitution of India to assail Ext. P3 proceedings. That apart, for the year 1980-81 the petitioner filed a revision petition. It was dismissed. It has been categorically found that from 1976-77 onwards, identical plea was considered and the Revenue consistently found that the income from the property standing in the name of the wife is also includible in assessing the petitioner. The above submissions of the Revenue are entitled to great weight. It is true that the findings of fact rendered for the previous years 1976-77 to 1979-80 cannot be said to be conclusive or final. There is no question of res judicata, either. But all

the same, it is settled law that when a particular question of fact or law is decided in one year and the identical matter or question comes up for consideration in the subsequent year, the decision rendered in the previous year will be certainly "good and cogent evidence" in the subsequent year, when similar question falls to be determined.--(see the decision of the Supreme Court in M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, . In E.V. Koradu Vs. Commissioner of Agricultural Income Tax,) the inclusion of the income from the property standing in the name of the wife, as the income of the assessee, was upheld by the Appellate Tribunal, for the years 1964-65 and 1965-66. The identical matter came up for consideration in the year 1968-69. The earlier decision was relied on and the income from the property standing in the name of the wife was again included in the assessee's income and upheld by the Appellate Tribunal. In a reference at the instance of the assessee, this was assailed. Chief Justice Sri. V.P. Gopalan Nambiar speaking for the Bench held at page 618 of the report:--

The Tribunal has not found that the prior decision of the Agrl. I.T. Appellate Tribunal was res judicata. It noticed the prior decision to the effect that the amount was transferred to the wife by the assessee, and recorded on the present occasion, that the Tribunal saw no reason to take a different view. This, we think, the Tribunal was entitled to find, irrespective of whether the prior decision of the Tribunal was based on the question of burden of proof or on an assessment of the evidentiary materials placed before it. We are unable to bold, as a proposition of law, that an earlier assessment based on burden of proof has got to be ignored for all purposes whatsoever, as a finding based on no material and on no evidence whatsoever. When pressed, counsel, for the assessee himself found it difficult, and if not impossible, to take up this extreme stand. As we read the order of the Tribunal, it has only relied upon the previous order of the Tribunal as a piece of evidence on which to rest its present conclusion. As counsel for the revenue pointed out, this it was entitled to do. The Supreme Court itself in the decision in M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, has pointed out that although the prior assessment proceedings would not constitute res judicata they are cogent piece of evidence in subsequent years in respect of matters on which the Tribunal has got to form an opinion or conclusion. It is only from that point of view that the Tribunal in the present case has relied upon the prior assessment proceedings.

In the circumstances, it cannot be said that the Tribunal was not justified in coming to the conclusion that it did.

The same reasoning will apply herein also. It may be that, so far as this year is concerned, in Ext. P1 order the Agricultural income tax Officer has not considered the matter in great detail. That is not necessary in the circumstances. But all the same, he has referred to the fact that in the assessments of the previous years, the income from the properties standing in the name of the wife were also included along with that of the petitioner. That finding of fact has not

been vacated in appropriate proceedings by the petitioner. So long as that finding stands, and there is no fresh material or other circumstance demonstrating or demanding a "fresh look" into the matter there was absolutely no inhibition for the Agricultural income tax Officer in relying upon the said finding of fact rendered in the previous years as a cogent and good piece of evidence when the identical question arose for consideration in the subsequent year. In this view of the matter, it is unnecessary to consider whether the provisions of Section 9(2) of the Agricultural Income Tax Act were properly invoked in this case for this year. A fresh consideration on merits, on that issue was not called for. When repeatedly questioned, counsel for the petitioner could not point out any circumstance or any fresh material, which in law, will mandate a fresh consideration of the issue, in this year. The larger question as to whether Section 9(2) of the Act will strictly apply need not be gone into. In this case, it was properly invoked and applied in view of orders of prior years. The order of assessment on this count is unassailable. Equally so, the order rendered in revision, Ext. P4.

2. The only other plea made by the counsel for the petitioner is that the income estimated is arbitrary. It is common ground that the petitioner did not maintain proper accounts. He was not able to substantiate the returns. The situation called for an "estimate" being made. The Agricultural income tax Officer on the basis of previous records and other attendant circumstances made an estimate. It is open to him to do so. It is settled law that in all estimates, some element of arbitrariness is inevitable. On perusing through Ext. P1 assessment order, I am unable to accept the plea that the order of assessment is so unreasonable or arbitrary as to transgress the limits imposed by law. It is settled law, that in making an estimate or best judgment assessment, it is the decision of the assessing authority that is crucial. It has not been shown that the estimate made by the Agricultural income tax Officer is not in accordance with law. Be that as it may, the quantum fixed on such estimate, is a pure question of fact. The Appellate Authority as well as the revisional authority considered the matter in detail. It is not for this Court, in exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of India, to conduct an enquiry with regard to the quantum and make its own estimate in the matter. This being a pure question of fact, the petitioner's contention should fail. The Original Petition is without force. It is dismissed with costs including Advocate's fee Rs. 250/-.