

(1959) 01 AHC CK 0022
In the Allahabad High Court
Case No : Civil Reference No. 4 of 1957

Kr. Vishva Nath Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 23-01-1959

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 2(16), 5, 6(2)

Citation : AIR 1959 All 637

Hon'ble Judges : B.N. Nigam, J; B. Mukerji, J

Bench : Division Bench

Advocate : S.C. Das, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

B. Mukerji, J.—On the 27th February, 1956, a Bench of this Court directed the Board of Agricultural Income Tax to state a case. The Board has in accordance with that direction stated the case. This statement covers cases of three assesseees which were referred to as References Nos. 310, 311 and 312 of 1956. These assessments related to district Si'tapur. All these references raise the same question. The question of law which was raised at the time when this Court directed the statement of case by the Board was formulated thus:

"Whether the loss incurred by the assessee u/s 6(2)(b) should be set off against the income u/s 5 of the Agricultural Income Tax Act to determine the total agricultural income of the assessee?" u/s 2(16) the phrase "total agricultural income" has been defined thus:

" "total agricultural income" means the aggregate of the amounts of agricultural income of the different classes specified in Sections 5 and 6 determined respectively in the manner laid down in the said sections and includes all receipts of the description specified in Clauses (a), (b) and (c) of Sub-section (1) of Section 2....."

2. Section 5 provides for the determination of agricultural income while Section 6

provides for the computation of the agricultural income of a kind which is not determinable u/s 5 or which would not come for determination u/s 5. It is, therefore, clear that total agricultural income in accordance with the definition contained in Section 2(16) of the Act is the aggregate of the income u/s 5 and income u/s 6. Further, it is clear that it is income that is taxed. The question which has to be determined is what is income. Income must be something which is left over after the permissible expenditures, for in order to have an income one has to have a surplus out of the venture whatever the nature of that venture.

3. The controversy between the parties was that, according to the department, the permissible deductions provided for u/s 6 of the Act were to be allowed and could be taken advantage of only up to a point when that expenditure equals the return; in other words what was contended was that if the expenditure--the permissible expenditure exceeded the return, then that expenditure which was in excess of the income was to be completely ignored in determining the total income of the assessee.

4. u/s 6 the income contemplated is the gross proceeds of sale of all the produce of the hind subject to the deductions enumerated in Sub-clauses (i) to (xiii) of Section. 6(2)(b). What has to be seen is whether, if the permissible deductions u/s 6(2)(b) not only swallowed up, so to speak, the gross proceeds and left an overall loss, then that loss had to be accounted for when the assessee's total income was being determined under the definition as contained in Section 2(16) for assessing the tax payable u/s 3 of the Act.

5. If the contention of the department were to be accepted as put forward on their behalf by Sri Uma Shankar Srivastava, then the position would be that in effect there would be a taxation of each source separately and not an overall taxation of the total agricultural income. It was contended that there "was no provision in the Agricultural Income Tax Act like what was provided for in the Income Tax Act by Section 24(1).

It is true that there is no such provision in the Agricultural Income Tax Act but, nevertheless, reference to the provisions of the Act to which we have already referred, clearly indicates that what was taxable under the Agricultural Income Tax Act was the total income of an assessee derivable from certain sources mentioned in the Act and that the income was to be determined after allowing certain deductions which were permissible.

Therefore, before one could actually find what an assessee's total income was from the various-sources one had to keep an account of the gains and losses sustained by the assessee under the various heads which were, apparently for good reason, dealt with in two separate sections of the Act, viz.. Sections 5 and 6 respectively. We could see the logic for the separate treatment of the two sources of agricultural income because, apart from these two sources being of different natures, the deductions which were permissible under these two separate sources had to be different.

6. A man's income cannot be split up into different units according to the source of its accrual. Nor can the expenditure which he incurs to make his earnings from the different sources be kept separate and confined only to a particular source when considering the overall position of a man's income. If, therefore, the expenditure side under one head exceeds the income under that head, then the excess of the expenditure has got to be accounted for when the man's ultimate income from all the sources is determined, because it is quite clear to us that no one can be said to have an income when he has in effect not made any.

7. From what we have said above we are of the opinion that in computing the total agricultural income on which an assessee is chargeable to agricultural Income Tax any losses which he may sustain in any of the two sources which go to make up his total agricultural income have to be set off against the total earnings of the two sources of the assessee. We may here point out that the view that we have taken receives support from a Full Bench decision of the Patna High Court in *Province of PROVINCE Vs. RAHA BAHANDUR HARIHAR PRASAD NARAIN SINGH.*, where it was held that

"when an assessee is being taxed on his total agricultural income, calculation should be made by adding up his gross receipts from all the villages and by deducting from it the total expenditure which is allowed to him by Section 6, the difference will be his total agricultural income which will be assessable if it exceeds Rs. 5,000/-. If the income of the assessee is also derived from land which is in his actual cultivation or which is let out by him on produce rent, the income which he gets is still agricultural income though in such a case the Act provides by Section 7 a mode of calculating the income and also provides for similar deductions as in a case falling u/s 6 provided the deductions are not allowed twice over. But the gross incomes must be added up and also the proper deductions as stated above."

8. We may point out that the Bihar Agricultural Income Tax Act was almost in the same terms as the U. P. Agricultural Income Tax Act. In the Bihar Act too there was no specific provision, at the time at any rate, when the decision in *PROVINCE Vs. RAHA BAHANDUR HARIHAR PRASAD NARAIN SINGH.*, was given which could correspond to a provision like what was contained in Section 24(1) of the Income Tax Act.

9. In the end we should like to point out that the interpretation which the Agricultural Income Tax Department wanted us to put on the Statute was not the natural or the normal interpretation. It is a well-known principle of interpretation that when construing a fiscal statute the Court has to lean in its interpretation in favour of the subject rather than in favour of the State. In this particular case, however, in our opinion, there was no question of leaning in favour of the subject, for in our view the [interpretation which has found favour with us is the true interpretation of the statute.

10. For the reasons given above we answer the question formulated in the

reference in the affirmative. This answer will cover all the three references, namely References Nos. 310, 311 and 312 of 1956 mentioned in the Board's order dated the 13th March, 1957. The assessee is entitled to his costs of all the three references which we assess at Rs. 100/- in respect of each reference.